

(27,122)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 373.

STRATHEARN STEAMSHIP COMPANY, LIMITED,  
PETITIONER,

*vs.*

JOHN DILLON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT.

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STRATHEARN STEAMSHIP CO., LTD., VS. JOHN DILLON.

a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at regular terms of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Wednesday, November 21st, A. D. 1917, and on Thursday, November 21st, A. D. 1918, at New Orleans, Louisiana, before the Honorable Richard W. Walker and the Honorable Robert L. Batts, Circuit Judges, and the Honorable Beverly D. Evans, District Judge.

JOHN DILLON, Appellant,

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

b Be it remembered, that heretofore, to-wit, on the 23d day of August, A. D. 1917, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Northern District of Florida, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3140; and that on the 5th day of December, A. D. 1917, a supplemental transcript of the record in said cause was filed, which said transcript and supplemental transcript are as follows:

c *Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

versus.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship "Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

[Original Record filed August 23, 1917.]

U. S. Circuit Court of Appeals. Filed Oct. 27, 1917. Frank H. Mortimer, Clerk.

1 Record in the District Court of the United States for the Northern District of Florida, at Pensacola, in certain cause in admiralty therein, wherein John Dillon is libellant, and the

British Steamship "Strathearn," her tackle, apparel and furniture, and the "Strathearn" Steamship Company, are respondents:

Be it remembered, that on the 2nd day of August 1916, came John Dillon, Libelant, by his proctor L. W. Nelson, and filed in the Clerk's office of the District Court aforesaid his libel in words and figures following, to-wit:

In District Court of United States for the Northern District of Florida.

To the Honorable Wm. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida:

The Libel of John Dillon, Division of Pensacola, Florida, late mariner of the vessel known as the S. S. "Strathearn" whereof R. McKenzie, was Master, against the said S. S. "Strathearn," her boats, tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of subtraction of wages, Civil and Maritime, allege and articulately propound as follows:

First. That at the dates set forth in the Schedule hereto attached and made part hereof, the said S. S. "Strathearn" whereof the said R. McKenzie, was Master being at the port of Liverpool, England, the said Master, by himself or his agent, did hire and ship the said Libelant to serve as carpenter on board the said vessel, at the rate of wages specified and set forth in full in the Schedule hereto attached.

2 That in pursuance thereof, the Libelant went on board and entered into the service of said Master, on said vessel, as such carpenter, aforesaid, and served for the time and at the rate of wages set forth in said Schedule.

Second. That during the whole time that he was in the service of said S. S. "Strathearn," to-wit, from the time when he went on board thereof to the time of -he leaving the same, he well and truly performed his duty as mariner on board said vessel, according to the best of his ability, and was obedient to the lawful commands of the said Master and the other officers of said vessel. Your Libelant further shows that at the time he was discharged from the said vessel the wages earned by him as aforesaid were not paid to him, or any part thereof, except what was duly credited in the Schedule hereto annexed; and that there is now due unto your Libelant, by reason of his services, the sum of \$125.00 which the said R. McKenzie hitherto hath altogether refused, and still doth refuse, to pay, although often thereto required by your Libelant.

Third. That the said S. S. "Strathearn," at the time when said services were rendered as hereinbefore set forth, was a vessel of 2,844 regt. T. tons burden engaged in the business of foreign and domestic commerce and navigation upon the public and navigable rivers and waters of the United States, and upon the waters navigable from the sea, to-wit: upon the Atlantic Ocean and Gulf of Mexico, and that she now lies at the port of Pensacola, Florida, in said District, and within the reach of the process of this Honorable Court.



Fourth. Libelant alleges and represents to this Honorable Court, that on Aug. 2nd, 1916, at this port in Pensacola, Fla., he asked of and demanded of the said Master R. McKenzie, one-half ( $\frac{1}{2}$ ) of the amount due him for said labor and payment of the same was refused. Whereby his contract with respondent has terminated and void.

3 Fifth. That all and singular the premises are true and within the Admiralty and Maritime jurisdiction of this Honorable Court; in verification whereof if denied, Libelant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the Libelant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, may issue against the said S. S. "Strathearn," her boats, tackle, apparel and furniture, wheresoever the same shall be found; and that all persons having or pretending to have any right, title or interest therein may be cited to appear and to answer all and singular the matters hereinbefore set forth; and that this Honorable Court would be pleased to decree the payment of wages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same; and for such other relief in the premises as shall to law and justice appertain.

JOHN DILLON,  
*Libelant.*

District Court of the United States for the Northern District of  
Florida Division, ss:

Be it remembered, That on this 2nd day of August, A. D. 1916, before me, at Pensacola, Florida, personally appeared the within named John Dillon, and made solemn oath that he had heard read the foregoing Libel, and knows the contents thereof, and that the same is true as to his own knowledge, except as to those matters and things stated to be on his information and belief; and as to those matters and things, he believes them to be true.

JOHN DILLON.

Sworn to before me, this 2nd day of August, A. D. 1916.

[SEAL.]

B. E. WILSON,

*Notary Public.*

My Commission expires Sept. 18th, 1918.

4

#### SCHEDULE.

Referred to the foregoing Libel, and forming part thereof.

The S. S. "Strathearn."  
To John Dillon.

Dr.,

1916.

\$125.00

Amount due to August 2nd, 1916.....\$125.00

being balance due Libelant for services performed.

*Certificate of Commissioner.*

L. W. Nelson, Proctor for Libelant, hereby certify that in my opinion *that* there is sufficient cause of complaint whereon to found Admiralty Process against the S. S. "Strathearn," her tackle, apparel and furniture, to answer for the wages of John Dillon.

L. W. NELSON,  
*Proctor for Libelant.*

On the 2nd day of August, 1916, attachment issued against the steamship "Strathearn," her tackle, apparel, boats, sails, engines, boilers and furniture in favor of libelant, which is in words and figures following, towit:

United States District Court, Northern District of Florida.

The President of the United States of America to the Marshal of the Northern District of Florida, Greeting:

Whereas, Libels in rem hath been filed in the District Court of the United States, for the Northern District of Florida, on the 2nd day of August, in the year 1916, by Hugo Reclund; Jeronimo Casalice and John Dillon, late mariners on the Steamship "Strathearn," whereof R. McKenzie was Master, against the S. S. "Strath-  
5 earn," her tackle, apparel, boats, sails, engines, boilers and furniture and against all persons lawfully intervening for their interest therein, in a cause of subtraction of wages, Civil and Maritime, for the reasons and causes in the said Libel mentioned, and praying the usual process and Monition of the said Court in that behalf to be made, and that all persons interested in the said Steamship or vessel, her tackle, etc., may be cited in general and special, to answer the premises, and all proceedings being had that the said Steamship, or vessel, her tackle, etc., may, for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libelant.

You are therefore hereby commanded to attach the said Steamship, or vessel, her tackle, etc., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held in and for the Northern District of Florida, on the 21st day of August, 1916, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And have you then and there this writ, with your return thereon.

Witness, the Honorable William B. Sheppard, Judge of said Court, and the seal of said Court, at the City of Pensacola, this 2nd day of August A. D. 1916.

[SEAL.]

F. W. MARSH,  
*Clerk.*

L. W. NELSON,  
*Libelants' Proctor.*

Indorsement: Returnable August 21, 1916, and filed August 14th, 1916. F. W. Marsh, Clerk.

6 And with entry of seizure in words and figures following, to-wit:

In obedience to the within monition, I attached the S. S. "Strathearn" therein described, on the 2nd of August and have given due notice to all persons claiming the same, that this Court will, on the 21st day of August (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

JAS. B. PERKINS,  
*U. S. Marshal.*  
Per C. P. McMILLAN,  
*Deputy.*

Filed Aug. 14, 1916. F. W. Marsh, Clerk.

And afterwards, to-wit:-on the 14th day of August, A. D. 1916, came Robert McKenzie, Master of the said S/S "Strathearn," and filed in the office of the Clerk of said Court the Claim for the said Steamship, which is in the words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libellant,

vs.

STEAMSHIP "STRATHEARN," Respondent.

7 And now before this Honorable Court appears the Strathearn Steamship Company, Limited, a corporation, owner of the said Steamship "Strathearn" by Robert McKenzie, its agent, and claims the above named ship "Strathearn," and prays to defend this suit accordingly.

BLOUNT & BLOUNT & CARTER,  
*Proctors for Claimant.*

STATE OF FLORIDA,  
County of Escambia:

Robert McKenzie, being duly sworn, says that the Strathearn Steamship Company, Limited, a corporation, is the true and bona fide owners of the Steamship "Strathearn" her boats, sails, tackle, apparel, furniture and other appurtenances against which this suit has been commenced by John Dillon, libellant, and that no other person is the owner thereof, and that for the purposes of this suit deponent is the agent of the owner, and deponent is the Master of said vessel, and is duly authorized by the said owner to put in this claim, and deponent further says that at the time of the commencement of this suit the said ship "Strathearn", her boats, sails, tackle, apparel, furniture and other appurtenances was in his possession as agent, and that he is the lawful bailee thereof for the owner.

R. McKENZIE.

Sworn to and subscribed before me this 14<sup>th</sup> day of August, A. D. 1916.

[SEAL.]

F. W. MARSH,  
Clerk,

By A. G. CHIPLEY,  
Deputy Clerk.

*Stipulation for Claimant's Costs, Entered in Pursuance of Rule 16, of the Rules of Practice of Said Court.*

In the District Court of the United States, Northern District of Florida, at Pensacola.

Whereas, a libel was filed in said Court on the 2nd and 3rd day of August, A. D. 1916, by John Dillon, Jeronimo Casilice, Hugo Runlund and John Hoikkala, against the Steamship "Strath-  
8 earn", for the reasons and causes in said libel mentioned, and praying that the said vessel be condemned and sold to pay the claim of the said libellant.

And whereas, afterwards on the 12th day of August, A. D. 1916, a claim was interposed and filed by Strathearn Steamship Company, Limited, a corporation.

And the parties hereto, hereby consenting that in case of contumacy or default on the part of the said claimant or his surety, execution may issue for the sum of Two Hundred and Fifty Dollars, (\$250.00) against their goods, lands, tenements and chattels.

Now therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be, and each of them is hereby,—bound in the sum of Two Hundred and Fifty Dollars, (\$250.00) conditioned that the claimant above named shall pay all costs and expenses which shall be awarded

against him by the final decree of this Court, or upon an appeal, by the Appellate Court, and shall further pay all costs and fees that may be due and payable by said claimant to any officer of said Court for services and fees incurred at the instance of said claimant or his proctor, and in default of the payment of the same, execution to issue as above provided. This bond to also apply to the causes of Jeronimo Casilice, Hugo Runlund & John Hoikkala, filed against said S/S "Strathearn."

STRATHEARN STEAMSHIP COMPANY,  
Claimant.

By R. McKENZIE,  
NATIONAL SURETY COMPANY  
OF NEW YORK,

By J. WALLACE LAMAR,

[SEAL.]

Attorney-in-Fact.  
Surety.

Taken and acknowledged this 12th day of August, A. D. 1916.

F. W. MARSH,  
Clerk and Commissioner,  
By A. G. CHIPLEY,  
D. C. & Com'r.

9 Approved this 12th day of August, A. D. 1916.

[SEAL.]

A. G. CHIPLEY,  
Dep. Clerk and Commissioner.

Claimant's Stipulation for Costs. Filed Aug. 12, 1916.

United States District Court, Northern District of Florida.

Whereas, a Libel was filed in this Court, on the 2nd-3rd days of August, A. D. 1916, by John Dillon, Jeronimo Casalice, & John Hoikkala, Hugo Runlund against the Steamship "Strathearn", her tackle, apparel and furniture, for the reasons and causes in said Libel mentioned, and praying that the same may be condemned and sold to answer the prayer of said libellant.

And whereas, a claim has been filed therein, by Strathearn Steamship Company, Limited, a corporation, by Robert McKenzie, Master, and the said Strathearn Steamship Company, Limited, and National Surety Company, a corporation, surety, the parties hereto, consenting and agreeing that in case of default or contumacy on the part of the Claimant or its sureties, execution may issue against their Goods, Chattels and Lands, for the sum of Five Hundred Dollars.

Now, therefore, it is stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned, shall be, and are bound in the sum of Five Hundred Dollars, conditioned that the Claimant above bound, shall abide by, and pay the money awarded by the final decree rendered in this cause by this Court, or, in case

of appeal, by the Appellate Court or in the causes of Jeronimo Casalice, Hugo Runlund & John Hoikkala filed against said S/S "Strathearn" on Aug. 2, 1916.

STRATHEARN STEAMSHIP COMPANY,

[SEAL.]

By R. McKENZIE,

*Agent.*

[SEAL.]

NATIONAL SURETY COMPANY  
OF NEW YORK,

By J. WALLACE LAMAR,

[SEAL.]

*Attorney-in-Fact.*

10 Signed, sealed and acknowledged before, and approved by me this 12th day of August, A. D. 1916.

[SEAL.]

F. W. MARSH,

*Clerk and Commissioner.*

By A. G. CHIPLEY,

*D. C.*

Approved this 12th day of August, A. D. 1916.

[SEAL.]

A. G. CHIPLEY,

*Dep. Clerk & Com'r.*

Claimant's Stipulation for Value. Filed Aug. 12, 1916,

F. W. MARSH,

*Clerk.*

And afterwards to wit upon the 6th day of October A. D. 1916 was file [filed] the answer of the said Steamship Company which is in the words and figures following to wit:

In the District Court of the United States in and for the Northern District of Florida.

In Admiralty.

JOHN DILLON

vs.

STEAMSHIP "STRATHEARN," Strathearn Steamship Company, Limited, a Corporation, Claimant.

The answer of the Strathearn Steamship Company, Limited, a corporation, incorporated and existing under the laws of the Kingdom of Great Britain, the claimant herein alleges:

1. It admits the facts set forth in the first paragraph of the libel, but it says that the schedule referred to therein does not set forth any rate of wages or any time of service as alleged in the first paragraph of the libel.

11 2. It admits the facts set forth in the second paragraph of the libel except that it denies that the libellant was at any

time discharged from the said vessel, and denies that there is due the libelant for his services the sum of One Hundred and Twenty-five Dollars as alleged in said paragraph.

3. It admits the allegations of the third paragraph of the libel except that it denies that said steamship was engaged in any domestic commerce within the United States.

4. It admits the facts alleged in the fourth paragraph of the libel except that it denies that the contract between the libelant and the respondent has become forfeited, null and void by reason of the facts set forth therein.

5. And further answering the claimant says that the said Steamship "Strathearn" is and was at all times mentioned in the libel a vessel of British registry and enrollment; that the port of registry of said vessel is and was at said times the port of Glasgow in Scotland, in the Kingdom of Great Britain; that the owner of said steamship is and was at all of said times the Strathearn, Steamship Company, Limited, a corporation, of Glasgow, Scotland, incorporated and existing under the laws of Great Britain, the claimant herein; that the libelant is a subject of the Kingdom of Great Britain, and that the voyage, upon which the services mentioned in the said libel were rendered, commenced at the port of Liverpool, in England, and that the libelant executed the articles of agreement by which he agreed to serve upon the said vessel in the Port of Liverpool, in England, on the 8th day of May, A. D. 1916; that the libelant agreed to serve upon the said steamship on a voyage of not exceeding three years' duration, commencing at Liverpool, proceeding thence to Newport News and / or any other port within the limits set forth in said articles trading in any rotation, and to end at such port in the United Kingdom as should be required by the Master; that  
12 the said voyage had been commenced but had not been concluded, nor had the libelant been discharged, at the time of the filing of the libel herein.

6. The claimant answering further alleges that prior to the filing of the libel herein the libelant on, to-wit, the second day of August, 1916, had left the said steamship without permission of the Master, and had remained away from the said steamship up to the time of the filing of the libel, and had failed and neglected while so absent without leave to perform his duties as a member of the crew of said steamship, and the libelant failed to return to his duties on the said steamship.

Further answering the libel, the claimant alleges:

7. That the libelant on or about the 8th day of May, 1916, entered into an agreement, copy of which is annexed hereto and marked schedule "A", in the port of Liverpool, England; and that the libelant and claimant and respondent understood that said agreement was to be governed by the laws of Great Britain and Ireland; that by the laws of Great Britain and Ireland said agreement is a valid and binding agreement upon the parties, as the same more fully appears by



the Act of Parliament of Great Britain and Ireland, known as The Merchants' Shipping Act of 1894 (57, 58 Vict. C. 60), an Act to consolidate enactments relating to merchants' shipping, 25th August, 1894. That said steamship at all times hereinbefore and hereinafter mentioned was seaworthy, properly manned, equipped and supplied, and that the libelant had no good or just cause to leave said ship, and said leaving was without excuse; and by the aforesaid Act of Parliament the libelant is not entitled to receive any wages or sum of money from the claimant or respondent by reason of the breach of the articles of agreement, marked "Schedule A", heretofore referred to. That by the said aforesaid Act of Parliament the wages of said libelant became forfeited; and claimant and respondent more

13 particularly refer to the following sections of said Act, and refer to the whole thereof with the same force and effect as if set forth at large, to-wit, the following:

Sec. 221. If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offenses he shall be liable to be punished summarily as follows:

a. If he deserts from his ship he shall be guilty of the offense of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has earned. \* \* \*

Sec. 234. If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the while wages or share, as a month or any other period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Claimant and respondent refer to the law of Great Britain and Ireland as established by the decision of *The Bulmer*, 1 Hag. Adm. 163, and as more generally set forth in *Abbot on Merchants' Ships and Seamen*, 14 Ed. p. 269 et seq., and to the General Maritime Law of Nations as evidenced by the Ordinance of Wisbury, Art. 61; Ordinance of the Hanse Towns, Art. 43; *Malloy Bk.* 2 ch. 3 Sec. 10; *French Ordinance Liv.* 2 tit. 7; *Des. Matelots*, Art. 3; *Abbot Merchant Ship & Seaman*, 14 Ed. p. 269 et seq., *Buttom v. Thompson*, 4 C. P. 330; and, also the Laws of Nations.

The claimant and the respondent allege that the libelant forfeited his wages and is not entitled to receive anything from the claimant or respondent by reason of his desertion. The claimant and

14 the respondent also allege that in and by the law of Great Britain and Ireland the libelant was guilty of the offense of desertion. Said law is more particularly set forth in the Act of Parliament heretofore referred to and made a part hereof, and to the following decisions of the Courts of Great Britain and Ireland, and



reference to said decisions is hereby made with the same force and effect as if set forth at length and at large herein:

Buttom v. V. Thompson, 4 C P, 330.

The Baltic Merchants, 1 Ed. 86.

The claimant and the respondent further allege that none of the wages were earned by the libelant within the United States of America.

Further answering the libel, the claimant denies:

8. All and singular the premises contained in the fifth article of the libel, and especially alleges that there is no admiralty and maritime jurisdiction in the premises in this Court, and that the assumption of jurisdiction of the premises by this Court is a violation of the Constitution, treaties and laws of the United States, and that the Congress of the United States had no jurisdiction and no constitutional right to make laws governing the situation.

Wherefore claimant prays that libelant take nothing in the above entitled cause; that said libel be dismissed and the claimant recover its costs and charges herein with such other relief as may be just.

BLOUNT, BLOUNT & CARTER,

*Proctors for Claimant.*

STATE OF FLORIDA,

*County of Escambia:*

Before the subscriber, a Notary Public in and for said State and County, personally appeared Robert McKenzie, who being duly sworn, says that he is the Master of the Steamship "Strath-  
15 earn", and agent of the Strathearn Steamship Company, Limited, a corporation; that he has read the foregoing answer, and that the facts stated therein are true.

R. MCKENZIE,

*Master.*

Sworn to and subscribed before me, this 6th day of October, A. D. 1916.

ALICE K. DOW,

*Notary Public.*

My Commission expires April 21st, 1920.

"SCHEDULE A."

*Agreement and Account of Crew.*

*Foreign-Going Ship.*

The term "Foreign-Going Ship" means every Ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the Coasts of the United

Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe, between the River Elbe and Brest inclusive.

Any Erasure, Interlineation, or Alteration in this Agreement will be void unless made with the consent of the persons interested, and attested by some Superintendent of a Mercantile Marine Office, or Consular or Colonial Officer.

Name of Ship—Strathearn.

Official No.—121282.

Port of Registry—Glasgow.

Port No. and Date of Register—104, 1905.

Registered Tonnage—Gross, 4,419; Net, 2,844.

Nominal Horse Power of Engine (if any)—352.

16 Registered Managing Owner or Manager:

Name—Burrell & Son.

Address (State No. of House, Street and Town)—54 Georges Sq. Glasgow.

No. of Seamen for whom accommodation is certified—45.

The several persons whose names are hereto subscribed, and whose descriptions are contained herein, and of whom nine are engaged as Sailors, hereby agree to serve on board the said ship, in the several capacities expressed against their respective names, on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—preceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master.

In all cases of salvage awards, notwithstanding anything herein provided the rating of Chief Officers shall be deemed to be the same as that of the Chief Engineer, the rating of the second officers that of the second engineer and the 3rd offs that of the 3rd Engs. Apprentices who have not completed two years' service shall be deemed of the rating of an O. S. and those Apprentices of over two years' service, the rating of an AB.

And the crew agrees to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or on shore; in consideration of which services to be duly performed, the said master hereby agrees to pay to the said Crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the scale on the other side hereof.

And it is hereby agreed that any embezzlement or wilful or negli-

- gent destruction of any part of the Ship's cargo or stores shall be made good to the Owner out of the wages of the person guilty of the same.

And it is further agreed, that if any seaman enters himself in a capacity for which he is incompetent, he is liable to be disrated.

And it is also agreed, that the Regulations authorized by the Board of Trade, which are printed herein and numbered 166 are adopted by the parties hereto, and shall be considered as embodied in this Agreement. And it is also agreed, that if any Member of the crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or Officer in charge of the Ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require; and it is also stipulated that advances on account and allotments of part of the wages shall be made as specified against the names of the respective seamen in the columns provided for that purpose.

And it is also agreed, that

(a) Should any of the crew fail to join at the time specified, the Master may ship substitutes at once.

(b) Seamen and Firemen shall keep their respective forecastles clean and shall leave them so at the termination of the voyage, under a penalty of five shillings for each case of neglect.

(c) The Seamen and Firemen shall mutually assist each other in the general duties of the ship.

(d) The crew shall be deemed complete with 25 hands, all told, of whom not less than eight shall be sailors.

Firemen to keep galley supplied with coal. No cash shall be advanced aboard or liberty granted other than at the pleasure of the Master.

It is further agreed that in addition to the rates of pay herein mentioned, a war risk allowance at the rate of 40/-per calendar month extra will be paid during the period of the present war to all ratings, except Officers and Engineers as arranged by arbitration and also 20/-per month only to Cooks boy—MR Stwd and Cabin boy.

In witness whereof the said parties have subscribed their names herein, on the days mentioned against their respective signatures.

(Signed)

By R. McKENZIE,

Master.

On the 8th day of May, 1916.

Date of Commencement of Voyage—9/5/16.

Port at which Voyage commenced—Liverpool.

These columns to be filled up at the end of the voyage.

Date of Termination of Voyage.....

Port at which voyage terminated.....

Date of Delivery of Lists to Superintendent.....

I hereby declare to the truth of the Entries in this Agreement and Account of Crew, Etc.

\_\_\_\_\_,  
Master.

(Signed on succeeding page.)

Nationality  
(If British, state  
birthplace).

Signature of crew.	Age.		Home address.
John Dillon . . . . .	46	Kildare	39 St. Pauls Rd Seacombe
Hugo Ronlund . . . . .	29	Russia	Sailors' Home Liverpool
J. Haikkala . . . . .	26	Do	Do

19

*Particulars of Engagement.*

Ship in which he last served, and year of discharge therefrom.		Date and place of signing this agreement.	
Year.	State name and official No. or port she belonged to.	Date.	Place.
1916	Knight of Thistle . . . . .	8/5/16	Liverpool
Do	Nigerca . . . . .	Do	Do
Do	Hermes . . . . .	Do	Do

In what capacity engaged.	Date and hour at which he is to be on board.	Amount of wages per week or calendar month.	Amount of wages advanced upon or at the time of engagement.
Carpenter . . . . .	6 A. M. 9/5/16	9 . .	5 . .
Seaman . . . . .	Do	6 . .	3 . .
Do	Do	6 . .	3 . .

Indorsement: Filed October 6, 1916. F. W. Marsh, Clerk.

20 On December 11, 1916, W. D. Howe, British Vice Consul at Pensacola, filed his application to intervene as *amicus curiæ*, in words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

JOHN DILLON

vs.

STEAMSHIP "STRATHEARN."

Now comes into Court W. D. Howe, and says that he is the British Vice Consul at Pensacola, Florida, and that by direction of the British Ambassador he applies to this Court for leave to intervene in the foregoing cause as *amicus curiæ* and as such *amicus curiæ* to submit a brief in this cause upon behalf of the British Government in regard to the construction, application and effect of the provisions of the Act of Congress known as the Seamen's Act, which provisions are invoked by the libellant in this cause.

W. D. HOWE,  
*British Vice Consul.*

Indorsement: Filed December 11, 1916. F. W. Marsh, Clerk.

On the 11 day of December, 1916, the Court granted an order allowing the said W. D. Howe, as British Vice Consul to intervene as *Amicus curiæ*, which order is in words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

JOHN DILLON

vs.

STEAMSHIP "STRATHEARN."

This cause coming on to be heard upon the application of W. D. Howe, British Vice Consul at Pensacola, for leave to inter-  
21 vene as *amicus curiæ* and to submit as such *amicus curiæ* a brief on behalf of the British Government in regard to the construction, application and effect of the provisions of the Seamen's Act invoked by the libellant herein, and the court being willing to grant said application;

It is therefore ordered, that the said application be, and the same is hereby granted.

Done and ordered at Pensacola on the 11th day of December, A. D., 1916.

WM. B. SHEPPARD,  
*Judge.*

Indorsement: Filed December 11, 1916. F. W. Marsh, Clerk.

On the 14th day of August 1916, came the respondent and claimant Captain Robert McKenzie, and the said libelants John Dillon, Hugo Roulund, John Hoikkala, with their witnesses and proctors before the duly appointed commissioner to take the testimony in said case, and the following testimony of said witnesses were taken in said cause, to-wit:

In the District Court of the United States for the Northern District of Florida.

JOHN DILLON

Libel in Rem. for Wages.

v.

Filed Aug. 2, 1916.

Bt. S./S. "STRATHEARN."

JERONIMO CASALICE

v.

Dismissed, Aug. 15, Ditto Ditto

Bt. S./S. "STRATHEARN."

HUGO RONLUND

v.

" "

Bt. S./S. "STRATHEARN."

JOHN HOIKKALA

Filed Aug. 3, 1916 " "

v.

Bt. S./S. "STRATHEARN."

22 Be it remembered that upon the 14th day of August A. D., 1916, came the Respondent and Claimant, Capt. Robert McKenzie, Master of the said Steamship, accompanied by his proctor, Judge F. B. Carter, of the firm of Blount & Blount & Carter, to give his testimony in the said cause. There was also present and testified for the Steamship, John D. Spence, Chief Engineer, and Albert Holmes, Second Mate, Proctor for Libelants was also present, and took the testimony of Libelants, John Dillon, Hugo Ronlund and John Hoikkala. All witnesses were duly sworn by commissioner A. G. Chipley.

It was agreed that the testimony now to be taken by consent of parties, may be used, so far as applicable, in each of the cases pending against the said S./S. "Strathearn." Said cases being above set out.

Captain Robert McKenzie.

Direct examination.

By Judge Carter:

Q. What is your full name?

A. Robert McKenzie.

Q. What connection have you with the S./S. "Strathearn"?

A. I am Master.

Q. Have you with you the Shipping Articles of the Libelants in these cases?

A. Yes.

Q. Where was this document that I have asked you about signed by these men?

A. In Liverpool, England.

Q. Are any of these men citizens or residents of the United States?

A. No, sir.

Q. They are all foreigners?

23 A. All foreigners.

Q. Of what nationality is the "Strathearn"?

A. British.

Q. Is she registered and enrolled under the British laws entirely?

A. Registered in Scotland. Call that British.

Q. Glasgow, Scotland, you mean?

A. Yes.

Q. Has the "Strathearn" within the last two years been doing any coastwise trade between ports in the United States?

A. No, sir.

Q. Since those Articles were signed, where has she been doing business?

A. We came up in ballast to Newport News, and bunkered there, and went to the West Coast of South American, Megillones, Chili, and loaded there for this port.

Q. So, that when you reached Pensacola, it was the first port in the United States where you were to unload anything?

A. Yes.

Q. And when did you reach Pensacola?

A. We arrived in Pensacola on the 31st of July, 1916, and came alongside that evening, about 5 o'clock.

Q. When did you begin to unload?

A. Half past seven the next day, the 1st of August.

Q. On the morning of the 1st, Captain, were these men (the Libelants) working on the ship?

A. No, sir.

Q. How about the Carpenter, was he there that day?

A. The Carpenter was working on that day, the other three were not working.

Q. Of the other three, was Jeronimo Casalice known as the donkey-man?

A. Yes; and the other two were sailors.

Q. The other two were sailors?

A. Yes.

Q. Was there work for them to do on August 1st?

A. Yes, the usual work.

24 Q. Did they, or any of them, apply to you before they left the ship for any part of their wages?

A. None, whatever.

Q. How long was it after they first left the ship, and ceased working, before they made application for wages?

A. Not before evening, and I think it was the next day, the 2nd.

Q. The evening of the second day?

A. The 2nd of August, that was the first time any of them suggested anything about wages, about money.

Q. What did they ask for; full or half wages?

A. To be paid off.

Q. Then, at any time after that, Captain, did they come and demand half wages?

A. After been ashore. They came on board, and wanted to know, under Section something or other, if I would give them half wages.

Q. What day was that?

A. The evening of the 2nd.

Q. But they at first demanded of you to pay them off?

A. To pay them off.

Q. That was the evening of the 2nd day, after they had quit work and later on they came back, and asked under Section of the United States Laws, if you would pay them half wages?

A. Yes. The Carpenter went ashore without liberty. Did not ask. Said he was going to see the Consul; and remained away all day, and did not go to work until after nine o'clock.

Q. Did he, at any time, make demand on you to pay him off?

A. Not then.

Q. Did he afterwards?

A. Afterwards.

Q. What day was that?

A. The next day, the 2nd; that evening. The evening of the 2nd, or else it was the morning of the 3rd.

Q. Captain; these men, all four of them, did they leave the ship without your authority or consent?

25 A. No consent from me.

Q. You did not know anything about their being gone, only that they were gone?

A. No.

Q. Will you state how much—have you a statement of the amounts that were due to these men—the amount that is due to these men by the ship; that is, if anything is owing to them?

A. Yes.

Q. Let me see that—(hands statement to Judge Carter).

Q. What is the item of Law Expenses that you have here?

A. That was arranged with Mr. Yonge. Covers costs, \$25 each case, if the cases were settled.

Q. Outside of the "Law Expenses", are the other items in the account correct according to your knowledge?



A. Yes.

Q. What is the value of a lb. in American money?

A. \$4.78.

Q. And what is the value of a shilling, American money?

A. A shilling, \$23.99.

Q. And a penny?

A. 2 cts.

Cross-examination.

By Mr. L. W. Nelson :

Q. Did these men, Captain, ask you for any money at all when they reached this port?

A. No. When we came in here, after they had been ashore, probably a whole day, or it was the next morning, they asked me for money, but they asked for no money when they came in here.

Q. Did they ask you for any money to buy clothes?

A. No.

Q. They did not have any money when they reached this port?

26 A. No, had no money. These men (if you will excuse me) These men got money in Megillones, South America, for clothes, matches, and such things. The three of them were off for two days. I gave them money to buy clothes.

Q. The 2nd day, did they make demand on you for money?

A. The second evening.

Q. They were still in your employ at that time.

A. Yes, but had not been working.

Q. They simply came ashore?

A. Came ashore, and did not ask any leave; were not working.

Q. Was that anything unusual upon reaching a new port?

A. Yes, they have no right to leave the ship without my permission.

Q. Then these seamen never leave a vessel without permission when they reach a port?

A. Not supposed to. Supposed to get permission before they come ashore.

Q. While that is the rule, they frequently do go without permission and return.

A. We don't say anything at all about that probably, so one-half of the crew remains on board of the vessel, and provided they are at work the first thing in the morning.

Q. Then in the afternoon, when they returned and demanded one-half of their wages, they were still at that time—were they not still in the employ of the ship.

A. They were in the employ of the ship, but were not on duty.

Q. They were simply not working.

A. Were not doing their work; not on their duty. Any employee on the Articles, still in employ of the ship.

Q. You did not pay them anything at all while in this port?

A. No.

Q. When they demanded one-half of their wages, what did you say to them?

27 A. All to get money on Saturday. I told them, if any wanted any money to send home, either give an order on the owner, or put them in the way of sending it home.

Q. After they had libeled the ship for their wages, did you agree to pay them if they would dismiss the libels?

A. No. I was going to pay the donkeyman off, if he had not libeled the ship, and had his amount of wages made out before the Consul; but he never came near the Consul until he libeled the ship. After they libeled the ship, I gave them no money.

Q. When these men asked you for money, and failed to get it, they went off to the Consul, did they not?

A. No, they went to the Consul before they came to me about money.

Q. They went to see him with reference to their money?

A. To get paid off.

Q. Did they tell you they had been to see the Consul?

A. No, but I saw the two sailors in the Consul's office, and the Consul advise them to go on board of the ship, and work, and that they would get their money when they started to work.

Q. Had they made any demand on you for money before they reached this port?

A. Yes, and they got it.

Q. How long before you reached this port?

A. The 3rd of July.

Q. They did not receive any more money after that until this time?

A. No. They don't receive money at sea; and when they received their money down in South America, they were off duty for two days.

Redirect examination.

By Judge Carter:

Q. Captain, if I understand you, when you paid them off—they got their money—at this place in South America after they got their money, they did not go back to work for two days?

28 A. No.

Q. After you got here (as I understood), they did not work on the first day of August, and they did not work on the second day, and they did not say anything to you about money until the evening of the second day?

A. Either the evening of the second. I don't think it was the first of August. When they came back the two sailors were under the influence of liquor. I did not see them until the morning of the second.

Q. Did they say anything to you at all until the evening of the second day after they had quit work.

A. Yes.

Q. And then they demanded to be paid off; and later, came back, and asked for half money, under some Section of some Statute?

A. Under some Section.

Q. And did you say that they were absent without permission?

A. Yes, I told them if they went about their work, all would get money on Saturday; and if they wanted money to send off, I would either give them an order on the owner, or see that they were in the way of sending this money home.

Q. Mr. Nelson asked you about clothes. What about clothes?

A. They want me to give a tailor. On principle, I don't give a tailor. They go ashore there. You will not see them go off at all. A tailor, many times they demand money from the tailor. "Well, I will not take anything from you unless you do that," I told them I give you the money, and you can buy in the cheapest market. One asked about clothes.

Q. Only one asked you about clothes.

A. Yes.

Q. You told them you would give them the money, and they could buy their clothes.

A. Could get the money on Saturday, and they could buy the clothes in the cheapest market.

29 Recross-examination.

By Mr. Nelson:

Q. After that—after they asked you for money, or made demand, did they work any more on the ship?

A. No more. The Carpenter has been off altogether six days altogether, and now is off again. Been back and forth, and was in jail for four or five days.

Q. Has he not been on the ship since?

A. He came aboard of the ship on Friday night last, and worked on Saturday. Saturday was a short day with the Carpenter. They worked until one o'clock.

Q. You permitted him to go back on the ship?

A. Oh, I never stopped him from going back on the ship.

Q. The time that you paid them off on the 3rd of July—

A. I did not pay them off. I simply gave them what money they wanted. That is not paying them off.

Q. And they were off two days, did you deduct for those two days.

A. No. Cannot make a fuss on board ship. Bad policy on the Master part if he goes logging on the first part of the voyage, if he can avoid it. I told them they could get no money during the week. On Saturday, if they get drunk they have an opportunity to get sober before Monday morning.

Q. That is what I meant when I asked you a while ago, if it was anything unusual for sailors to go off when reaching a new port, for a day or two, and have a good time.

A. Never.

Signature waived.

See later testimony of Captain.

John D. Spence, Chief Engineer.

Direct examination.

By Judge F. B. Carter:

Q. What is your name?

A. John D. Spence.

30 Q. What position do you hold on the s/s "Strathearn"?  
A. Chief Engineer.

Q. Do you know Jeronimo Casalice, who was the donkey-man on the "Strathearn"?

A. Yes.

Q. Do you recall the time when you all arrived in Pensacola?

A. Yes.

Q. What day of the week and month was it?

A. Monday, the last day of July.

Q. Did Jeronimo Casalice work on Tuesday?

A. No, sir.

Q. Was there work for him to do on Tuesday?

A. Yes.

Q. Has he worked any since that time?

A. No, sir.

Q. Has there been work on the ship for him to do since that time?

A. Yes. All the while; the whole time.

Q. Under whose direction are the men called out to work; would he be called out to work; this donkeyman; under whose direction?

A. My direction; yes.

Q. And you know, as a fact, that he did not go to work the next morning after you arrived here, and has not worked any since?

A. He would not work for me.

Q. And has not worked on the ship any?

A. Has not worked since.

Q. Do you know whether the Carpenter and the two sailors who have sued out these libels, have worked any since that morning?

A. I do not know.

Cross-examination.

By Mr. Nelson:

Q. It was understood that the donkeyman was to be paid off at this port, was it not?

A. Did I understand that?

Q. Yes.

31 A. No; I did not understand that.

Q. There was no agreement that he was to be paid off at this port.

A. There was no agreement between he and I regarding that.

Q. Were all the other men on the ship working at that time?

A. All my men were; yes.

Signature waived.

Albert Holmes, Second Mate.

Direct examination.

By Judge Carter:

Q. What position do you hold on the S/S "Strathearn"?

A. Second Mate.

Q. Do you know of a man by the name of Casalice, and another by the name of Hoikkala, who have sued out libels against the S/S "Strathearn"?

A. Yes, they worked there, seamen.

Q. That is what we usually understand as sailors?

A. The same thing as a sailor.

Q. Do you recall when you got into this port?

A. July 31st, in the evening.

Q. Was there work for these men to do on the ship the next day?

A. Yes.

Q. Did they do any work?

A. No.

Q. Have they been back to do any work since that time?

A. Not to do any work; been back and forth to the vessel. Never been to work since that day.

Q. Do you know about the Carpenter and the Donkeyman, whether they have done any work?

A. Not the donkeymen.

Q. How about the Carpenter?

A. Been off and on since then; can't state the dates.

32 Q. Did he work on last Saturday; you don't remember?

A. No; not under my supervision.

Cross-examination.

By Mr. Nelson:

Q. The Carpenter has been working today?

A. Been working; started this morning. I see him outside there now.

Signature waived.

Captain McKenzie recalled.

Direct examination.

By Judge Carter:

Q. When do you expect to sail?

A. Expect to sail on Wednesday.

Q. And you and Mr. Spence and Mr. Holmes are all officers on that ship and expect to sail that day?

A. Yes; Wednesday morning.

See later testimony of Captain.

*Testimony Taken for Libelants.*

Hugo Ronlund, Libelant.

Direct examination.

By Mr. Nelson:

Q. What is your name?

A. Hugo Ronlund.

Q. You were a seaman on the S/S "Strathearn" were you?

A. Yes.

Q. Were you in the employ of the ship and its Master when you reached the port here in Pensacola?

A. Was I employed? Yes, I was.

33 Q. What happened when you reached the port here?

A. Reached here Monday night, about five or six o'clock; and the next morning, had some misunderstanding with the Captain about Union time, work time. The Captain does not go by Union Rules; We are Union men, and left my work about eight o'clock after breakfast, and went to the English Consul's; me and the Boat-swain and another two sailors. Couldn't do nothing about this Union. Couldn't do nothin; only to see the Captain. That same night when I saw the Captain and asked for money, Can't give you any now; maybe can give you some Saturday. Can't we get some clothes? Have no clothes to put on me. No; not now, maybe Saturday can give you some money. I left my work after breakfast and went to the lawyer. Asked the Captain for half of my wages and then I went to my lawyer to take the case for me. The Captain refused to pay me.

Q. You asked him, you say, for money to get some clothes with?

A. Yes.

Q. And you could not get any money.

A. No.

Q. And then you heard about this Seaman's Act?

A. Yes.

Q. And then you went to see a lawyer?

A. Yes.

Q. And then you libeled, and made demand for one-half of the wages due you?

A. Yes.

Q. And the Master told you you would get nothing?

A. Refused me.

Q. Had you quit work up to that time?

A. Two days before. After the ship came, I left the ship. I worked from six o'clock to breakfast time. I quit that time to go to see the Consul, and see the lawyer. I refused my work after that. I asked the Captain for half of my earnings.

Q. You first went to the British Consul, and you got no relief?

A. No, see the Captain first.

34 Q. And it is not true that you quit work on the ship until after you had made this demand?

A. The Captain told me, you refused your work. I go to find out my rights I have on the ship. I refuse no work. I went into town. We finish work after five o'clock in the evening and then no place to go.

Q. You libeled the ship for \$95.00 as being due you?

A. I didn't know exactly the United States money. We have English wages. About \$95.00.

Q. This is approximately correct?

A. Yes, around that. I don't know American money.

Q. This demand for one-half of your wages was made here, in Pensacola, after the ship had reached this port?

A. Yes.

Q. Had you made any other demand before that for wages?

A. All hands asked on board.

Q. When had you received money before this?

A. I asked the next night.

Q. You don't understand me. When did you last receive money; when was the time?

A. In Megillones, Chili, about one-half.

Q. The last you received?

A. Yes, about \$3.00, American money.

Q. Did you ask for some money to go ashore with as soon as you got there?

A. Not the same night, the next night.

Q. You never got a cent?

A. He said; if you behave, maybe give you some Saturday. Asked for a dollar.

Q. To buy clothes?

A. No; I give you no dollar, I give you something Saturday night. That is all.

Q. John Dillon and John Hoikkala, and Jeronimo Casalice, they also libeled for their wages; what demand, if any, did you hear these men make to the Master for one-half of their wages due them; here, in this port? These men, I have mentioned? Did they make any demand for one-half of their wages?

A. Yes; one-half of their earnings.

35 Q. Were you present?

A. Yes; the Captain refused every one of them.

Q. And paid them nothing?

A. Oh, he said, maybe give some afterwards, and then said I give you no money at all.

Cross-examination.

By Judge Carter:

Q. You got here to Pensacola on the last day in July?

A. Yes.

Q. Is it not a fact that you did not work the next day?

A. I worked until breakfast. I told the Captain, I don't refuse my work. I need time to go to town, and see a lawyer, and get things clear. Half past six I went ashore.

Q. Did you ask permission to go ashore?

A. No. I told him I am going to the Consul to see what he says about things.

Q. Says about what?

A. The understanding. The Union work. The time off. We belong to the Union, Sailors' Union.

Q. You and these other men you have been talking about, belong to the Union.

A. Yes.

Q. What is the difference between the Union Rules and the Rules the Captain wants to work by?

A. Union Rules, 7 to 5 in the evening.

Q. That is, you would work only during that time?

A. The Ship's Rules, from 6 to 6. The Union Rules from 7 to 5, and finish always at 5; but on the ship's time, had to use 6 to 6, and on shore, the Union Rules is to start at 7, and the ship rule to start at 6.

Q. Those are the Union Rules in Pensacola, in the port here?

A. Yes. We heard about Union Rules before. Asked the Captain to let us go on the Union Rules.

Q. Were you a member of 'the Pensacola Union? Rules that would force you not to do that work?

36 A. No Branch in this town. British Firemen's and sailors' Union. A Branch in Mobile.

Q. How did you find out when you got here that they wanted you to comply with Union Rules?

A. In Pensacola before.

Q. There is nothing in your Shipping Articles about Union Rules?

A. Nothing at all. Nothing about working time at all. When I signed the last Articles. I asked about over time and everything. Nothing about over time in these Articles.

Q. What last Articles are you talking about? These ones you signed for this ship.

A. Yes. I signed these Articles (Shipping Articles shown to Witnesses by Judge Carter). Yes, one of these Articles hanging on the Forecastle wall. That says nothing about over time work.

Q. You say, that you went to the Captain that morning at breakfast time?

A. A little before breakfast time, before seven o'clock.

Q. You told him you wanted to work by the Union Rules?

A. Yes.

Q. And he told you you must work by the ship's rules?

A. Yes.

Q. You then said you would have to go to the Consul and see about it?

A. Yes.

Q. And then you left the ship without permission.

A. Yes. I told the Captain I wanted to see the Consul.



Q. Did he tell you you could go? You left without his permission?

A. Yes. He said to go to work.

Q. You left without permission, to go to see the Consul, and he said to go to work?

A. Yes. I didn't leave without permission. I only told the Captain.

Q. You say you left the ship without his consent?

A. Yes.

Q. You did not go back to work any more that day?

37 A. Yes.

Q. You did not go back the next day?

A. Yes. When we returned to; half past six, I don't know exactly.

Q. You worked the next day until breakfast time?

A. Yes. And then I went to see a lawyer, to find out about this new law in America.

Q. Where did you find out about this new law?

A. At the tailor. He had this law, and showed me. Have a right to claim half your wages in the United States of America.

Q. Have you worked since that time?

A. No sir.

Q. Then, from the time you got here, you have only worked until breakfast time on the first and second day, and you have not worked any since that time?

A. No, not since I asked for half my wages, I have not worked at all.

Q. What time did you go back to the ship on the second day, to ask about the wages. Late in the afternoon.

A. Yes, four o'clock.

Q. Had you asked him before that time for your wages?

A. Asked for money. The firemen and sailors went to ask him on Tuesday night. That was the first day the ship worked; started to work Tuesday night.

Q. You say on Tuesday you went to him, and asked him for wages?

A. Asked for some money. He said, maybe Saturday.

Q. Did you ever go to him and ask him to pay you off?

A. Yes.

Q. When did you ask him that?

A. When the ship came here. Does not work by the Union Rules, to pay me off.

Q. That was the first day and then you asked him to pay you off?

A. Yes.

Q. And these other men did the same thing?

38 A. Not the Carpenter.

Q. All except the Carpenter and yourself?

A. It was four men went to the Consul.

Q. Four men went to the Captain, and asked him to pay them off?

A. No, I only asked about the Union Rules myself.

Q. Did you not say these other men were there?

A. Me, and the other men.

Q. And when he said he would not follow the Union Rules, you asked him to pay you off, that was the first day?

A. Yes.

Q. Were these other men with you at the time, and they all asked him to pay them off, when he said he would not work by these Union Rules, you and the other two were there, but not the Carpenter?

A. The other sailors.

Q. You all, except the Carpenter, asked to be paid off, if he would not work under the Union Rules?

A. They only asked the Captain to go by the Union Rules, I asked to be paid off; and Anderson asked to be paid off.

Q. You don't know whether Dillon asked to be paid off, or to use the Union Rules?

A. Yes, Dillon at the same time asked to pay him off.

Q. When was that, the first day?

A. I don't know, I was not present. He only told me. He said he had no room to stop. He is supposed to be in the room with the Boatswain.

Q. How about John Hoikkala, he asked him to pay him off, at the same time you did?

A. No, afterwards. He was sick. The same day I did.

Q. How about Jeronimo Cassalice?

A. He asked the Captain, I suppose, before I asked him. He was not there when I asked him.

Q. You went to the Captain before breakfast on the first day that the ship worked?

A. Yes.

Q. And asked him to work under the Union Rules?

39 A. Yes.

Q. He said he would not do it?

A. Yes.

Q. And you asked him to pay you off, and he said he would not do it? And you went to the Consul, and did not work any more. And the next morning you worked until breakfast time and then left again, and you never have worked any since?

A. No, sir.

Q. Now, then, the evening of the second day, about four o'clock, you went back to the Captain and asked for half of your wages, and he refused to pay that?

A. Yes.

Q. You had not been working except until breakfast time that day, or the day before, and you were off without the Captain's leave?

A. Yes.

Q. What kind of work until breakfast time did you do those two mornings?

A. I was down in the aft hold, with the lifting up of the ventilators.

Q. Both mornings?

A. No, on the first morning.

Q. What kind of work besides the ventilators?

A. Nothing, big heavy ventilators.

Q. You were still working on the ventilators when breakfast came the first morning?

A. Yes.

Q. And on the second morning?

A. Worked around the deck.

Q. What were you doing the second morning?

A. I don't remember what I was doing.

Q. Is it not a fact, that you did not work any either of these mornings, either one of those two mornings?

A. I did work.

Q. How about these other men, did they work to-?

A. Yes, all worked.

Q. The men I have asked you about?

A. Yes.

40 Q. Did Dillon work?

A. Yes.

Q. You say you worked both mornings, but quit at breakfast time.

A. Yes.

Q. But, later in the day time, you went to see the Consul? Did he work that second day?

A. No, sir.

Q. You don't know?

A. No.

Q. You only know he was working the first time up to breakfast time?

A. I don't know. Maybe he worked.

Q. I will ask you now; Was Dillon there up to breakfast the first morning?

A. Yes.

Q. How about Jeronimo Casalice?

A. He refused to work at all.

Q. How about John Hoikkala?

A. The same as to the others. I see him going around the deck.

Q. Up until breakfast these two mornings.

A. Yes. He went ashore with me to see the Consul. I met him ashore. Gone to see the lawyers.

Q. Which one asked for half of his earnings first, you or Hoikkala?

A. Me, and the donkeyman were the first.

Q. And then did Hoikkala go that same evening?

A. The same time and Dillon, and Hoikkala the next day.

Q. Dillon? Did he go with you?

A. The same time, the second day.

Q. When you and the other men left on the second day, did you leave without Captain's permission?

A. Yes.

Q. Did not ask any permission at all?

A. Yes.

41 Q. The first morning, he said to go to work, when you asked to go to the Consul, he said to go to work on the ship?

A. Yes.

## Redirect examination.

By Mr. Nelson:

Q. Was it anything unusual to leave the ship, and go ashore, without the expressed leave of the Master?

A. Well, I don't know. I heard what the law is on the ship. When a ship goes to the dock, the fellows have a right to go to the Consul and ask for his rights. Along if the Captain, refuses, go always, go to see the Consul.

Q. It was your understanding that a seaman had a right in the absence of the expressed permission of the Captain, to go to see the Consul?

A. Yes.

Q. Did you go to see the Consul with reference to this Union you have talked about, or with reference to getting some money?

A. I wanted to ask the Consul to get these clear between the Captain and me, with reference to the Union Rules; and then another understanding with the Captain about being paid off.

Q. If the Captain had complied with your demand, you would have carried out your contract, would you not?

A. When I heard what the United States law was, I asked for one-half. I am not going to work any more. I have finished.

Q. You say you worked a part of each day?

A. I said I have not been working since. The Captain said I don't work enough for my food, when I work until breakfast time.

Q. Did the Captain tell you he objected to your going ashore?

A. The Captain said to go to work.

Signature waived.

42 John Dillon, Libellant.

## Direct examination.

By Mr. Nelson:

Q. You were the Carpenter on the S./S. "Strathearn" until she arrived here at this port, were you?

A. Worked until this morning and I am now.

Q. When did you receive any money prior to reaching this port?

A. First on the West Coast of South America; Megillones, Chili.

Q. How long ago?

A. It would be quite two months now.

Q. Have you received any money since reaching this port?

A. Not one cent after reaching this port.

Q. What demand, if any, did you make for your wages, or any part of them?

A. I asked the Captain, in the presence of one of these sailors, to give me one-half of any money due to me to date.

Q. What did he say?

A. He said, "no".

Q. You were in the employ of the Master up to that time?

A. I am at present.

Q. Have you been working to-day on this ship?

A. I worked this morning before breakfast.

Q. Then when you made demand for one-half of your wages, and the Captain refused to comply with it, you libeled the ship?

A. Yes.

Q. You claimed earnings of \$125.00; is that approximately correct?

A. Approximately correct. That is so.

Q. Do you remember that day you made demand for one-half your wages?

A. On the third day after we arrived. We arrived on Monday.

A fortnight from to-day.

43 Q. And it was on Wednesday that you made claim?

A. Yes.

Q. Is the vessel due you your wages from the time this libel was taken out until now, until to-day? Or were you just working along to keep yourself in practice?

A. I was working there because we had made a claim for half day wages. I am a stranger here, and I cannot go ashore without means; so I continued on the ship.

Q. To get food and lodging?

A. Food; lodging and work.

Q. Did anybody else made demand for one-half their wages that were due them at that time?

A. The same time as myself? Hugo Ronlund.

Q. Who were the others?

A. John Hoikkala. I was not there when he made the demand, but I think he has made that. I am not sure.

Q. John Casalice?

A. Yes, he made it before any of us.

Cross-examination.

By Judge Carter:

Q. You got here on Monday night the 31st of July?

A. Yes.

Q. Did you work the next day?

A. Yes.

Q. All day?

A. All day Tuesday.

Q. How about Wednesday?

A. Wednesday, I went to see the Consul.

Q. Did you work Wednesday?

A. Wednesday morning up to breakfast time.

Q. Then you went to see the Consul.

A. Yes.

Q. What did you go to see him about?

A. About trouble I had on board. The Boatswain would not allow me in my room.

- Q. You did not work any more that day?
- 44 A. Not Wednesday; because I went afterwards to see the lawyer. The Consul did not give me any satisfaction.
- Q. Did you work Thursday?
- A. Yes.
- Q. Been working since?
- A. Thursday, Friday and Saturday. A week to-day, I went ashore to see my lawyer again, and had some trouble with one of the fireman. He struck me, and a policeman arrested both of us.
- Q. Where did you have trouble with the fireman? On the street?
- A. In a saloon.
- Q. On the streets of Pensacola?
- A. Inside, when he struck me.
- Q. It was not on the ship; in Pensacola.
- A. No sir, in jail.
- Q. You got in the Police Prison?
- A. Yes.
- Q. What days?
- A. From Monday to Friday, Tuesday, Wednesday, Thursday, Friday, four days.
- Q. The first week you got here, you say you worked Tuesday, Thursday, Friday and Saturday?
- A. Yes.
- Q. Did you work all day those days?
- A. Yes.
- Q. Well, now, where did you get the money to buy the liquor which got you into prison? Did the Captain give it to you?
- A. When I went ashore on Monday, I had 40 cts.
- Q. Did the other men have any?
- A. I don't know what; four of us. The Chilian fireman had some money.
- Q. Did you not go back to the Captain on Tuesday, and ask him to pay you off, because you could not get along with the Boatswain?
- A. Not Tuesday, on Wednesday. No.
- 45 Q. Did you complain to the Captain about the boatswain?
- A. Yes; about work privileges at sea.
- Q. You went to see the Consul on Wednesday about that?
- A. Yes.
- Q. And you did not work any more after that?
- A. No more Wednesday.
- Q. When was it you went to the Captain, and asked for half wages?
- A. On Wednesday morning.
- Q. What time?
- A. Twelve or one o'clock, something like twelve or one o'clock.
- Q. On Wednesday, you went to the Captain, and asked for half wages?
- A. Yes.
- Q. Who told you you could get half wages?
- A. The two sailors.
- Q. Who had quit?
- A. They were ashore.

Q. Did they not tell you they had quit?

A. No.

Q. Had quit on account of Union Rules?

A. No.

Q. Did you ever hear anything about Union Rules?

A. Only from the fireman on Saturday, about a week after.

Q. You did not have any talk with the Captain about Union Rules until Saturday?

A. No.

Q. You did not quit on account of Union Rules?

A. No.

Q. You have not quit?

A. No, sir, I am working this morning.

Q. Did you not quit Wednesday; did not work any at all after breakfast?

A. Went to see the Consul. It was Wednesday afternoon before I finished.

Q. Did you sit there all morning with the Consul?

46 A. Sometime with the Consul, and then I went to see the lawyer.

Q. Was that before you went to see the Captain?

A. Yes. And the Consul said "There is your room. It is up to you to take it." The Captain said the same. The Boatswain had a knife.

Q. Was that at sea?

A. At sea. The Consul said: There is your room, you can go take it. No; He kept it locked.

Q. What room did you take when you went back?

A. In the firemen's forecandle for several days on a hatch; anywhere.

Q. You quit at 8 o'clock on Wednesday morning?

A. Yes.

Q. You came direct to Mr. Howe, the Consul?

A. Well, I did not go ashore until nine o'clock.

Q. Did you go on up to Mr. Howe then?

A. I did not go direct, I had to walk around.

Q. Was the first place you went to Mr. Howe's? How long did you stay at Mr. Howe's?

A. A half hour before he came.

Q. How long after?

A. Twenty minutes to a half hour.

Q. What did he tell you, to go take your room?

A. The same as the Captain. The room is there; to take it.

Q. You did not go back direct to the ship [ship]?

A. No, I saw these other fellows, went to see Mr. Nelson.

Q. Was that the first time, they had not mentioned it to you before?

A. No.

Q. Where did you meet them, on the street?

A. Yes.

Q. What did they say to you?

A. Go to see a lawyer.

Q. About your own business, how came you to go off, you did not have any business?

47 A. Very uncomfortable on the ship; very intolerable for me.

Q. Why did you go to see the lawyer?

A. See what he would advise me about getting the room.

Q. Advise you about the half wages?

A. Yes.

Q. So, instead of going back to the ship about your room, you followed them up to the lawyer's office, to see about half wages?

A. I slept on the ship that night.

Q. You did not see the Captain that night?

A. No sir, not until the next day.

Q. I mean from the time you knocked off after breakfast, you did not see him until the next morning?

A. Yes.

Q. About seven o'clock.

A. I don't know when I spoke to him.

Q. You said you spoke to him about wages?

A. On Wednesday, the same day I went to see the Consul, I asked for half wages to date.

Q. That was after you went to see Mr. Nelson.

A. Yes; it was after dinner.

Q. You went back to the ship, and asked for half wages, and then came back to town. You did not go to work?

A. Yes, after he had said no.

Q. Did he say anything about money?

A. Give it on Saturday.

Q. Did he say anything that time about some money on Saturday?

A. He said, would not get any.

Q. Did he say anything to you to that time?

A. Yes, he told me on account of suing out a writ, would not get any money.

Q. Did you hear him say anything to the other men about letting them have some money on Saturday?

A. No.

Q. You never heard anything about that?

48 A. No.

Q. Was it not the donkeyman that was stabbing you with the knife?

A. No, the boatswain. The Captain got that mixed up; that was not what I said. The donkeyman did not have any knife at all.

Q. He had no knife?

A. No. I don't know what he would do, and would not do.

A. He says he never threatened anything of the kind. It was the boatswain.

Q. You are still working there in pursuance of your agreement or Articles?

A. All work going on, just the same.

Q. Under these same Articles?



A. Yes.

Q. And you have been doing that except this one day that you were off?

Redirect examination.

By Mr. Nelson:

Q. I believe, you said that you did that simply to have a place to get food and sleep, and you are expecting to pay for it?

A. I leave that to your advice.

Q. This boatswain; how long have you been having trouble with him?

A. Him? Almost from the beginning. Had not been out a week before commenced finding fault with the Russian sailors.

Q. He was the man you had trouble with? Was he an officer over you?

A. The next petty officer under me. I am rated before him on the ship's Articles.

Q. Did he make any charge?

A. No charge. Stood at the door with a knife that long like, said he would do us up if any attempted to get in the room.

Q. Did you tell the Captain?

49 A. Yes. He said the boatswain would not do anything.

He said the room is there to go take it. That is what the Consul told me, to do the same.

Q. You said you could not get in the room?

A. Because the door was locked.

Signature waived.

John Hoikkala, Seaman.

Direct examination.

By Mr. Nelson:

Q. You are one of the seamen on the Ship "Strathearn"?

A. Yes.

Q. And upon reaching this port here in Pensacola, what demand, if any, did you make for some money? Did you ask the Captain, or Master, for any money?

A. Yes.

Q. When was the first time?

A. The first time, Tuesday morning.

Q. Did you ask him for money the day you reached here, or not?

A. No.

Q. The next day?

A. The next day.

Q. What did the Captain say?

A. He said give it to me Saturday.

Q. He would not give you any?

A. He said give me some Saturday.

Q. Didn't he tell you how much?

A. Yes sir, said we wanted half.

Q. How long had the ship been here in this port then?

A. Two days, or three. Two days.

Q. And you made demand on the Master of the S/S "Strathearn" for one-half your wages, did you not?

A. Yes.

Q. And he refused to give you any?

50 A. Yes.

Q. Then you libeled the ship?

A. Yes.

Q. You have libeled the ship for \$100.00, is that approximately the amount?

A. Yes.

Q. Had you quit working on the ship, or violated any of its rules, up to that time that you made that demand? You had been working on the ship up to that time that you made this demand, and the Captain refused you, to give you one-half of the wages, had you?

A. I worked Tuesday morning, from 7 to 8, and afterwards I hurt my ribs, and went into town to get a doctor.

Q. Did you get a doctor?

A. Yes.

Q. Did the Captain agree to that?

A. Yes.

Q. Was that the reason you did not work those days?

A. Yes; my ribs hurt. Didn't know whether they were broke or not. That was Wednesday. The Captain said, you three fellows all the time in trouble. Take you before the British Consul. All the time trouble on the ship. You didn't do this work so long you been in the ship working.

Q. As I understand, on account of your injury, you did not work those days?

A. A sick man.

Q. Then you went and demanded one-half of the wages?

A. Yes. Before on Thursday, on Wednesday, said to have it on Tuesday; get rid of you. I didn't work nothing, the Captain say. I get clear of you three fellows, Hugo Ronlund, and Hoikkala, and the donkeyman; The Captain said I didn't pay him no how. I said I don't ask any pay. I didn't ask nothing. That fellow said, I didn't ask pay. The Captain said, go to work, don't play like. Too busy. Go to work. I said, all right, Captain, and the next morning, I asked for my wages. The Captain said, "no".

Q. You did work the day before?

A. Yes, in the morning when I got hurt.

51 Q. Who else made demand for one-half of their wages at that time?

A. The donkeyman; Hugo, and the Carpenter the day before.

Q. At the time you made your demand; John Casalice; Hugo Ronlund and John Dillon made demand for one-half of their wages due them?

A. Yes.

Q. And the Captain refused to pay them?

A. Yes.

Q. And then you libeled the ship?

A. Yes.

Q. For the full amount of the wages?

A. Yes.

Q. You did not sever your connection with the ship, or refuse to work, until after the Captain refused to pay one-half of your wages?

A. No.

Q. If the Captain had complied with your demand, and paid you one-half of the wages, would you have carried out your contract, continued to work?

A. Yes.

Cross-examination.

By Judge Carter:

Q. What day did you get to Pensacola?

A. Monday night, after five, sometime.

Q. You did not go to work the next morning?

A. Yes.

Q. How long did you work?

A. Before breakfast, until about breakfast time.

Q. Did you quit off and go ashore?

A. Yes, and the Boatswain, Anderson. And see the British Consul at 11 o'clock, or half past ten.

Q. What did you want to see the British Consul about?

A. Working all the time.

Q. Was that now what you were hired for, to work all the time?

52 A. No, sir.

Q. What were you hired for, if you were not hired to work?

A. To see the Consul about Saturday morning?

Q. You went to see him to see whether you would have to work all of Saturday; was that not the idea?

A. Yes, 7 to 5.

Q. This was Tuesday morning?

A. Yes.

Q. Saturday was a long time off?

A. Yes.

Q. How came you to leave the ship?

A. Did not leave the ship.

Q. Why did you go to see the Consul on Tuesday when Saturday was so long off?

A. Had lots of trouble in working time. 6 to 5. Wanted work to be 7 to 5.

Q. And then allowed to have Saturday?

A. Yes. The fellows said, let's go to see the Consul.

Q. And tell about your wanted to work from 7 to 5 you had been working from 6 to 6?

A. Yes.

Q. How came the Union to work from 7 to 5?

A. We wanted 7 to 5. Went to see the Consul about working seven to one on Saturday?

Q. Who was it first said anything about working over time?

A. The Boatswain, and another sailor.

Q. These other sailors that brought these libels with you?

A. No.

Q. How came you to think about working from 7 to 5, or from 6 to 5. Had you been called out that morning at 6? You began work at 6 that morning?

A. Began after 6.

Q. At half past 6?

A. Yes.

Q. Then you had been working in the morning a while before going to see the Consul? What did you want to see him about? Were you going to see him about having a half day Saturday?

A. Yes, wanted it all the time. We came back to the ship.

Q. Did you go to work after you came back?

A. Yes. I got hurt.

Q. Where did you hurt yourself? Where were you?

A. Tuesday morning, at 8 o'clock.

Q. You hurt yourself that morning before you went to the Consul?

A. Yes, Knocked me in the ribs, only just a little bit.

Q. Did you tell the Captain?

A. Yes.

Q. Did you see the doctor about it? The doctor said you were all right; you were not hurt?

A. Not much hurt. He said not much hurt.

Q. Did you work the next day?

A. The next day I asked for half my wages?

Q. You have not worked on the ship since? You have not worked on the ship?

A. No.

Q. Have you slept there?

A. Sometimes.

Q. Did you get anything to eat on the ship?

A. No.

Q. You say you reported to the Captain you had been hurt, and he said to see the doctor? You did not see him until late in the evening?

A. Yes.

Q. Why did you not go to see him as soon as you were hurt?

A. I told him by and by a doctor come on board.

Q. Why didn't you go to see the doctor? Why did you wait until late in the afternoon?

A. The next day.

Q. You did not see the doctor until the next day, Wednesday?

54 A. I didn't see the Captain before the next day, Wednesday. The Captain not on board; went ashore.

Q. Did he stay ashore all day?

A. Not all day.

Q. Why didn't you see the Captain?

A. The Steward said it was too late.

Q. In other words; you left in the morning, and you stayed in town all day?

A. I went on board—I went on board at half past twelve, dinner time.

Q. How long did you stay on board then? You went on at half past twelve, night or day time?

A. Day time.

Q. Why did you not see the Captain that evening?

A. The Steward said, too late, come in the morning.

Q. What did you do?

A. Lay in the forecastle head.

Q. Did you work any.

A. No.

Q. Did you lay down all the time?

A. No; walked about. Wednesday morning I told the Captain. He said see the doctor when he comes on board.

Q. You had seen the Consul Tuesday morning?

A. Yes. The other fellow said see the Captain,—The Consul said bring the Articles along.

Q. You did not have the Articles with you?

A. The boatswain know about the Articles. I heard about getting paid off.

Q. You heard on Wednesday about getting half wages?

A. On Tuesday I heard that.

Q. Who told you?

A. Another fellow on board.

Q. When did you see the lawyer?

A. Thursday morning.

Q. What did you do Wednesday?

A. Wednesday I lay down on the forecastle hatch. See the doctor Wednesday.

Q. You did not work any?

55 A. Yes.

Q. You went to see the lawyer Thursday?

A. When I heard the Captain would not pay off.

Q. Had you asked him for money before that?

A. No, sir.

Q. You said you asked him for money Tuesday, and he said Saturday. When was it he told you that?

A. Another fellow.

Q. You never asked for any until Thursday?

A. No.

Q. That is the first time you asked for money?

A. Yes.

Q. The other fellow asked for money on Tuesday.

A. Yes.

Q. You did not hear that? You only know what they told you?

A. Yes.

Q. Did you ask him to pay you off, or what did you say?

A. The Captain called me Wednesday night. Get ready to see the

Consul on the next morning, to pay you fellows off. I want to get clear of you. I told the Captain, all right, I didn't mind.

Q. Why did he tell you he would pay you off?

A. I don't know.

Q. Did he give you any reason?

A. You always rowing aboard of the snip—Didn't want us any more.

Q. That was Wednesday night?

A. Yes.

Q. You said all right?

A. That was good.

Q. Who was the other fellow?

A. Cawkins, said he did not want to go. He is on board of the ship.

Q. What time was it you went to him and asked him about the wages?

A. Thursday morning, before seven o'clock.

Q. What did you say to him when you went to him?

56 A. Captain; I want to get my money, full time, and buy clothes, nothing to wear. "You don't get money before Saturday," Can't I get half what is coming to me? The Captain said, No, you can't get any money before Saturday.

Q. And then you asked for half wages?

A. Yes.

Q. I thought you said the Captain said Wednesday night he would pay you off, in cash?

A. Yes, I didn't ask to be paid off.

Q. You did not do any day's work from the 4th to the 6th?

A. Does not do a day's work.

Q. Did he tell you you did not do a day's work, and that he wouldn't pay you off?

A. Rowing around on the ship. To get ready to go to the Consul's.

Redirect examination.

By Mr. Nelson:

Q. How did you get hurt, did you say?

A. Heavy tons, eight feet, away up (making motion)

Q. How did it happen to hurt you?

A. We had to lift it two feet, and then put it—Another fellow's hand slipped, and the thing knocked me.

Q. Did you suffer any pain?

A. Yes, that time.

Q. How long did it pain you?

A. About three days I felt it.

Q. Do you feel any pain from it now?

A. No.

Q. And the end of that eight foot thing hit you in the ribs?

A. Yes.

Q. You did not libel for that?

A. No.

Q. Didn't claim any damages.

A. No, I only went to see the doctor, to see if there was anything broken.

57 Q. You only claimed the money you had earned.

A. Yes. I wanted to work on board the ship. When I saw the Captain wanted to put me ashore, to pay me off, asked for half my wages, to pay me off. I didn't want to work any more.

Q. If he had paid you, you would have kept on working?

A. The Captain said, I did not want you to go ashore. I didn't want to work no more on that ship. The Captain said you would get paid off before 12 on Thursday.

Q. The doctor you went to, who said you were not seriously hurt, was the ship's physician?

A. Yes.

Signature waived.

Capt. Robert McKenzie, Recalled—for Respondent.

Capt. Robert McKenzie, Master:

Q. Did you ever hear anything from any of the men on the ship about working by Union Rules after you got to Pensacola?

A. No, that was never mentioned.

Q. Was there any suggestion made to you about working under Union Rules? What was the ship's rule so far as working time?

A. None at all.

Q. Captain; this man John Hoikkala, you have heard him say that he came and complained about his ribs being hurt, or about receiving some hurt on the ship; was any such complaint made?

A. None, whatever.

Q. He said you paid him and two other men off?

A. Hoikkala said he wanted to go to the Hospital. I cannot mention his complaint. No complaint on board of the ship.

Q. And nothing was ever said about being hurt on the ship?

A. No, sir.

58 Q. How about his statement that you told him on Wednesday you would pay him off?

A. I would have paid him off before the boatswain left, but after I paid the boatswain off, I would not have paid them off. The boatswain is the one that works the men on board the vessel, and there was some trouble; but the boatswain (he belonged to Georgia, born in Georgia) was an American, claimed to be British, had something the matter with his eye. He asked me if I would pay him off; not his people, and he would not get along with them very well, or with I well. I paid him off, and let him go; and had no complaints after he was gone.

Q. Is the boatswain the same one that this other man said, stood in the door, with a knife, and would not let him get in the room?

When did you pay him off?

A. On the 3rd of August.

Q. And he has not been there since?

A. Has not been there since.

Cross-examination.

By Mr. Nelson:

Q. You did not pay off until after they had libeled the ship, did you?

A. I paid him off on the 3rd; that was before the ship was libeled.

Q. Before you knew of the ship being libeled?

A. It was on the evening of the 3rd that the libel was put.

Q. Did you pay the boatswain in the morning? Or at night time?

A. Before twelve o'clock; from eleven to twelve.

Q. And you don't know whether the libels had been filed in the Clerk's office before that hour, or not? These men didn't know that you had paid the boatswain off at that time.

A. I suppose they would know I had paid him off.

Q. This seaman that got his rib hurt, came to you, and told you he wanted to go to the hospital, did he not?

A. No truth whatever.

59 Q. Did you not hear him say a while ago that he wanted to go to the Hospital?

A. With an old complaint I had been giving him medicine for.

Q. He did not tell you what he wanted to go to the Hospital for?

A. Oh, yes.

Q. You knew he was unwell.

A. This thing he brought on board of the ship. I cannot mention it.

Q. Did you tell him to go to the Doctor at that time?

A. I was attending to him on the voyage; after he came and let me know.

Signature waived.

Said case was submitted to the Court and after argument of Counsel for respective parties the Court on the 30th day of December, 1916, passed an order dismissing the libel of libelant, John Dillon, in words and figures following, to-wit:

In the District Court of the United States in and for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

VS.

BRITISH STEAMSHIP "STRATHEARN," Respondent; STRATHEARN STEAMSHIP COMPANY, a Corporation, Claimant.

This cause coming on for final hearing, and the Court having heard and considered the evidence and the argument of proctors for



libelant and respondent and claimant, and the Court having considered the evidence and the arguments and being advised of its opinion that the libel should be dismissed:

Now, therefore, it is ordered, adjudged and decreed, that the libel be, and the same is hereby dismissed at the cost of the libelant.

60 Done and ordered at Pensacola, this 30th day of December, A. D. 1916.

WM. B. SHEPPARD,  
*Judge.*

Indorsement: Filed January 2, 1917. F. W. Marsh, Clerk.

\* \* \* \* \*

In the District Court of the United States for the Northern District of Florida.

In the Matter of JOHN DILLON vs. THE "STRATHEARN."

*Libel.*

To Honorable Wm. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida:

The Petition of the libelant John Dillon by his proctors respectfully represents, that he is a seaman on a foreign vessel, and as such came to and was in a port of the United States and within the jurisdiction of this Court; that he desires to appeal the above stated case, and that he is unable to furnish bond or to pay the cost in said proceeding and of said appeal, owing to his poverty; that said claim in the above stated case was for wages earned in the above stated capacity.

Wherefore he prays to enter said appeal and prosecute the same in forma pauperis, and without the payment of cost or giving security therefor.

BEALL, NELSON & LAIRD,  
*Proctors for Libelant.*

Filed June 21, 1917. F. W. Marsh, Clerk.

61 On the 29th day of June, 1917, the libelant, by his proctor . . . , filed an affidavit of insolvency, which is in words and figures following, to-wit:

In the District Court of the United States for the Northern District of Florida.

JOHN DILLON, Libelant,

vs.

THE STEAMSHIP "STRATHEARN," Respondent.

Libel for Seamen's Wages.

STATE OF FLORIDA,  
*Escambia County:*

Personally came L. W. Nelson, who, on oath says that he is proctor for the libelant in the above stated case, and that of his own knowl-

edge libelant is insolvent and unable of his own account to pay the cost or give the bond required by law for the appeal of the above stated case.

L. W. NELSON,  
*Proctor for Libelant.*

Sworn to and subscribed before me, this the 29th day of June 1917.

FRONIE HARRISON,  
*Notary Public.*

My commission expires August 19, 1917.

Filed June 29, 1917. F. W. Marsh, Clerk.

*Petition for Appeal.*

On the 21st day of June, 1917, libelant filed his notice of Appeal and Assignment of Errors, which is in words and figures following, to-wit: Also Petition for Appeal.

In the District Court of the United States for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libelant,

vs.

THE BRITISH STEAMSHIP "STRATHEARN," Respondent; STRATHEARN STEAMSHIP COMPANY, Claimant.

Now comes the above named libelant, by his attorneys L. W. Nelson and Robert H. Anderson, and feeling aggrieved by the decree and opinion to which it refers, which said decree was made on the 30th day of December, A. D. 1916, dismissing the libel herein filed, and prays to be allowed an appeal from the decree in this case to the Circuit Court of Appeals for the Fifth Circuit.

L. W. NELSON &  
ROBERT H. ANDERSON,  
*Proctors for Libelants.*

The prayer of the petition is granted; and the appeal allowed on the 21st day of June, A. D. 1917.

WM. B. SHEPPARD,  
*United States District Judge for the  
Northern District of Florida.*

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*Notice of Appeal.*

In the District Court of the United States for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libellant,

vs.

THE BRITISH STEAMSHIP "STRATHEARN," Respondent; STRATHEARN STEAMSHIP COMPANY, Claimant.

*Notice of Appeal.*

You will please take notice, that the libellant above named, hereby appeals from the final decree made and entered hereon on the 30th day of December, A. D. 1916, in the United States Circuit — of Appeals for the Fifth Circuit in the City of New Orleans, State of Louisiana.

L. W. NELSON &  
ROBERT H. ANDERSON,  
*Proctors for Libellant.*

To Messrs. Blount & Blount & Carter, Proctors for Respondent and Claimant:

We acknowledge receipt of copy of the foregoing notice of Appeal, this the 21st day of June, A. D. 1917.

BLOUNT & BLOUNT & CARTER,  
*Proctors for Respondent and Claimant.*

In the District Court of the United States for the Northern District of Florida.

In Admiralty.

JOHN DILLON, Libellant,

vs.

THE BRITISH STEAMSHIP "STRATHEARN," Respondent; THE STRATHEARN STEAMSHIP COMPANY, Claimant.

The libellant hereby assigns errors in the rulings in the proceedings in the District Court therein, as follows:

64

1. That the Court erred in entering final decree of December 30th, 1916, dismissing the libel.
2. That the Court erred in refusing to enter a decree in favor of libellant.

3. That the Court erred in finding that the libelant was a deserter.
4. That the Court erred in holding that the Seamen's Act of the United States, did not apply to foreign seamen, shipped on foreign vessels in foreign ports, when such seamen in an American Port, contemplated by the Articles, invokes the Court's jurisdiction.
5. The Court erred in the application of the British Law to the facts of this case.
6. The Court erred in its construction of the British Law when applying same to the facts of this case.
7. The Court erred in holding that the British Law and not the American Seamen's Act applied and governed the case.
8. Because the Court erred in holding the libelant to be a deserter under the British Law.

L. W. NELSON &  
ROBERT ANDERSON,  
*Proctors for Libelants.*

Copy of above received this the 21st day of June, A. D. 1917.  
BLOUNT & BLOUNT & CARTER,  
*Proctors for Respondents.*

Filed June 21st, 1917. F. W. Marsh, Clerk.

\* \* \* \* \*

65 On the 22d day of June, 1917, an agreement was entered into between counsel of respective parties with reference to the case, which is in words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

JOHN DILLON, Appellant,

VS.

STRATHEARN STEAMSHIP COMPANY, Appellee.

HUGO RONLUND, Appellant,

VS.

STRATHEARN STEAMSHIP COMPANY, Appellee.

JOHN HOIKKALA, Appellant,

VS.

STRATHEARN STEAMSHIP COMPANY, Appellee.

It is agreed, by and between Robert H. Anderson, Proctor for Appellants, and Blount & Blount & Carter, Proctors for Appellees, in the above styled causes; that the transcripts of the records in said causes be prepared and printed separately except the testimony of the

witnesses, which was taken jointly before the commissioner in the Court below, in each case, and which said testimony counsel agrees shall be printed, and shall form a part of the record as printed, and shall be used in and considered as the testimony in each of said causes.

It is further agreed that all three of said records be printed and bound in one volume.

Pensacola, Florida, this the 22nd day of June, A. D. 1917.

ROBERT H. ANDERSON,  
*Proctor for Appellants.*  
BLOUNT & BLOUNT & CARTER,  
*Proctors for Appellees.*

Filed June 22, 1917. F. W. Marsh, Clerk.

66 UNITED STATES OF AMERICA,  
*Northern District of Florida, at Pensacola:*

I, F. W. Marsh, Clerk of the United States District Court, in and for the said district at Pensacola, do hereby certify that the foregoing pages numbered from one to 73, constitute a true copy and transcript of the record of the proceedings and decree in the case of John Dillon against the Steamship "Strathearn" and Strathearn Steamship Company, Limited, a corporation, Respondent, as appears from the files and records in my office.

In testimony whereof, I have hereunto set my hand and seal of said Court at Pensacola, this the 10 day of July, 1917.

[SEAL.]

F. W. MARSH,  
*Clerk of the District Court of the United States  
for the Northern District of Florida.*

67 And afterwards, to-wit, on the 18th day of July, A. D. 1917, the libellant filed his bond to the said respondents, which is in the words and figures following:

United States District Court, Northern District of Florida.

JOHN DILLON, Libellant,

vs.

STEAMSHIP "STRATHEARN", Respondent; "STRATHEARN STEAMSHIP COMPANY, a Corporation, Claimant.

"Know all men by these presents, that we, John Dillon and the National Surety Company of New York, a corporation, are held and firmly bound unto the Steamship "Strathearn" and the Strathearn Steamship Company, a corporation, in the sum of two hundred and fifty dollars, (\$250.00) for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and sever-ly, firmly by these presents.

Signed and sealed, this the 18th day of July, A. D. 1917.

The condition of this obligation is such that whereas the said John Dillon is prosecuting an appeal to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit to reverse the decree rendered by the Judge of the District Court of the United States for the Northern District of Florida, in a cause wherein said John Dillon was libellant, the Steamship "Strathearn," Respondent, and the said Strathearn Steamship Company, a corporation, Claimant, dismissing the said libel. Now, if the said John Dillon shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation to be void, else to remain in full force and virtue.

JOHN DILLON,  
By His Proctor, L. W. NELSON,  
[SEAL.] NATIONAL SURETY COMPANY  
OF NEW YORK,  
[SEAL.] By J. WALLACE LAMAR,  
*Attorney in Fact.*

68 Signed before and approved by me, this the 18th day of  
July 1917.  
[SEAL.] F. W. MARSH,  
*Clerk.*

[Indorsed]: 3140, U. S. Circuit Court of Appeals. Filed August 23, 1917. Frank H. Mortimer, Clerk.

In the District Court of the United States for the Northern District of Florida.

UNITED STATES OF AMERICA,  
*Northern District of Florida:*

I, F. W. Marsh, Clerk of the District Court of the United States for the Northern District of Florida, do hereby certify that the annexed is a true and correct copy of the Appeal Bond in the case of John Dillon, Libellant, vs. Steamship "Strathearn," in the sum of two hundred and fifty dollars, as the same remains on file and of record in said Court.

Witness my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 17th day of July, A. D. 1917.

[SEAL.] F. W. MARSH,  
*Clerk.*

69 *Supplemental Transcript of the Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship  
"Strathearn," Appellee.Appeal from the District Court of the United States for the Northern  
District of Florida.

[Original Supplemental Record Filed December 5th, 1917.]

U. S. Circuit Court of Appeals. Filed Dec. 10, 1917. Frank H.  
Mortimer, Clerk.70 In the District Court of the United States for the Northern  
District of Florida.

JOHN DILLON, Libelant,

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of the Steamship  
"Strathearn," Respondent.

This cause coming on to be heard upon the application of the respondent for an order nunc pro tunc embodying in the record of the proceedings of this cause in this Court the facts and matters herein-after set forth.

It is ordered that the facts and matters hereinafter set forth in numbered paragraphs one to six, inclusive, which were in evidence before this District Court upon the hearing of this cause either by stipulation or admission of the parties or by proof before the Court are and for all purposes shall be taken and held to be a part of the evidence and of the record of this Court in this cause. The said matters and things are as follows, namely:

1. The Articles of the Steamship "Strathearn" which are annexed to the answer of the claimant herein, marked "Schedule A", and printed in the record commencing at page fifteen, constitute the agreement under which the appellant served as carpenter upon the Steamship "Strathearn".

2. It appeared at the hearing in the District Court that the appellant left the service of the "Strathearn" before the vessel sailed from Pensacola, and the vessel sailed from Pensacola without him.

71 3. There was introduced and admitted in evidence upon the hearing the following statement of account identified by

the Master and testified to as being the ship's account with John Dillon:

"J. Dillon (Carpenter).

Joined 9/5/16 till 12/8/16 3 Mo. 4 Days at £11.00 per month .....	£34	9	4	
Advance on joining (£5.00) Order on Owner (£2.00) Dis. Fees 1/-.....	7	1		
	27	8	4	
Advance by Master 3/7/16 £0 7.6) Tobacco and postage (£0 9.2) .....		16	8	
	26	11	8	
Fines as per Off log (£1. 100) Forfeited wages (£2 14 0) .....	3	14		
	22	17	8	
13 weeks insurance at 3d per week.....		3	3	
	22	14	5	
Less Law expenses .....	5	4	7	2x
Exc \$4.78 = \$83.61      Balance.....	17	9	9	3x"

4. The Act of Parliament of Great Britain and Ireland, known as the Merchants' Shipping Act of 1894, was introduced and admitted in evidence at the hearing in the District Court, and the sections hereinafter set forth numbered Section 221 and Section 234 are parts of the said Act introduced in evidence and are as follows:

"Sec. 221. If a seaman lawfully engaged, or an apprentice to the sea service, commits any of the following offences he shall be liable to be punished summarily as follows:

72 a. If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part of the effects he leaves on board, and of the wages which he has earned.

\* \* \* \* \*

Sec. 234. If a seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be an amount bearing the same proportion to the whole wages or share, as a month or any other period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage or run; and if the whole time spent in the voyage or run does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share."

5. At the hearing in the District Court there was introduced and admitted in evidence the following quotation from the second volume of the fourteenth edition of Abbott's Merchant Ships and Seamen, page 269, in proof of the law of Great Britain, namely:



"Desertion from the ship is held to be a forfeiture of the wages previously earned, in all maritime States. And in conformity to this principle of maritime law, the legislature of this country, in the reign of King William the Third, 'for the prevention of seamen deserting of merchant ships abroad in parts beyond the seas,' enacted, 'That all such seamen, officers, or sailors, who shall desert the ships or vessels wherein they are hired to serve for that voyage, shall for such offence forfeit all such wages as shall be then due to him or them.'" By the subsequent statute, which I have so often quoted, if a seaman shall desert, or refuse to proceed on the voyage on board any ship bound to parts beyond the seas, or shall desert from the ship to which he belongs, in parts beyond the seas, after he shall  
 73 have signed the contract, he shall forfeit to the owners the wages due to him at the time of his deserting or refusing to proceed on the voyage. If a mariner quit the ship with leave of the master, and when ordered to return refuses to do so, his wages are forfeited. But they are not forfeited by his quitting the ship, and refusing to proceed in her on a voyage not designated by the articles. And if in the Court of Admiralty the owners allege desertion as a defence to a suit for wages, it is incumbent on them to show the articles or contract, in order that the stipulated service may appear.'

6. There was introduced and admitted in evidence in proof of the law of Great Britain the official report in the case of Button versus Thompson in the Court of Common Pleas, reported in the English Reports in Volume 4 Common Pleas, from page 330 to page 350.

Done and ordered at Pensacola as of the 30th day of December, A. D. 1916, on the 4th day of December, A. D. 1917.

WM. B. SHEPPARD,

*Judge of the District Court of the United States  
for the Northern District of Florida.*

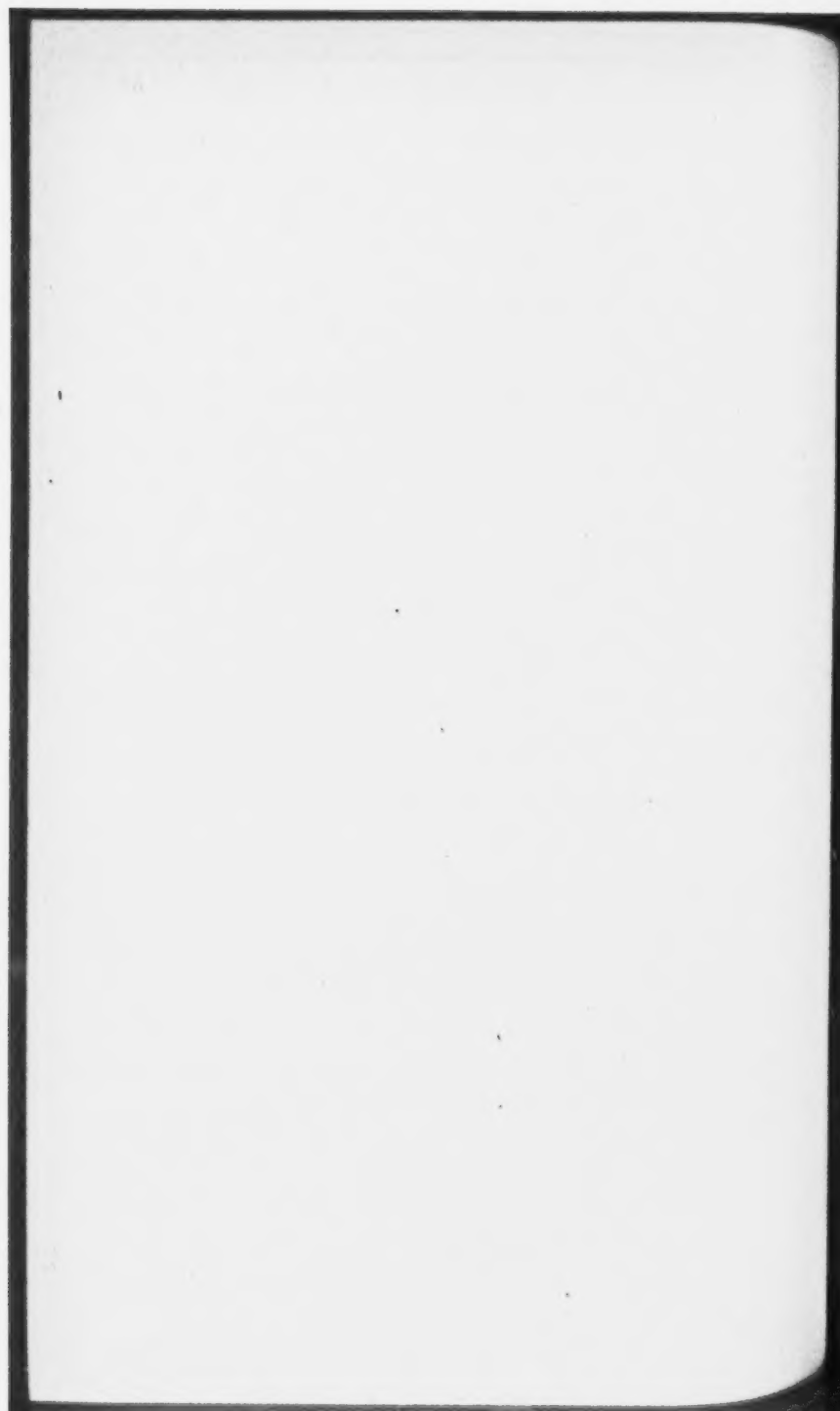
UNITED STATES OF AMERICA,  
*Northern District of Florida:*

I, F. W. Marsh, Clerk of the District Court of the United States for the Northern District of Florida do hereby certify that the foregoing is a true and correct copy of a certain order made and entered in said Court on the 4th day of December, A. D. 1917, in the case of John Dillon vs. Strathearn Steamship Company, etc. as the same remains on file and of record in said Court.

Witness my hand and the seal of said Court at the City of Pensacola, in said District this 4th day of December, A. D. 1917.

[SEAL.]

F. W. MARSH,  
*Clerk.*



That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Order Allowing Supplemental Transcript.*

Extract from the Minutes of December 5th, 1917.

No. 3140.

JOHN DILLON

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship  
"Strathearn."

On motion of counsel for appellee,—counsel for appellant consenting thereto in open Court,—it is ordered by the Court that the supplemental record presented herewith be filed and printed.

*Argument and Submission.*

Extract from the Minutes of December 5th, 1917.

No. 3140.

JOHN DILLON

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship  
"Strathearn."

On this day this cause was called, and, after argument by W. J. Waguespack, Esq., and H. W. Waguespack, Esq., for appellant, and J. E. D. Yonge, Esq., for appellee, was submitted to the Court.

*Statement of the Case and Questions Certified to the Supreme Court.*

Filed and Entered February 4th, 1918.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship  
"Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern  
District of Florida.

Silas Blake Axtell, L. W. Nelson, W. J. Waguespack, and Herbert  
W. Waguespack, for appellant.  
J. E. D. Yonge, for appellee.

Frederick R. Coudert and Howard Thayer Kingsbury, specially appearing on behalf of the British Vice-Consul at Pensacola, Florida, as *amicus curiæ*.

Before Walker and Batts, Circuit Judges, and Evans, District Judge.

*Statement of the Case.*

The appellant, John Dillon, a subject of Great Britain, shipped at Liverpool, England, on May 8, 1916, as carpenter, on the steamship "Strathearn", then and at the time of the filing of the libel in this case a vessel of British registry and enrollment, owned by the Strathearn Steamship Company, Limited, a corporation organized and existing under the laws of Great Britain. By the shipping articles signed by him the appellant agreed to serve "on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—proceeding thence to Newport News and (or) and other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master." On that voyage the Strathearn proceeded from Newport News to a port in South America, and from the last-named port to Pensacola, Florida, arriving there on July 31, 1916. On August 2, 1916, while the Strathearn was in the port of Pensacola, John Dillon, who was still in the employment of the ship as carpenter, demanded of the master of the ship one-half of the wages he then had earned. The master refused to comply with this demand, and no payment was made thereon. Prior to the time of that demand nothing had been paid to Dillon on his wages since the ship left a port in South America about two months before. At the time the demand was made the amount of wages earned by Dillon, less what had been paid him thereon, was approximately \$125, no part of which was due under the terms of the shipping articles signed by Dillon. After the master refused to comply with Dillon's said demand the latter on the same day filed in the District Court of the United States for the Northern District of Florida a libel in admiralty against the ship in which he claimed \$125, the amount of wages alleged to have been earned when said demand was made and compliance with it refused. The District Court rendered a judgment dismissing the libel. The case was brought to this court by appeal. In this court the action of the District Court in dismissing the libel was sought to be sustained on the ground that section 4 of the Act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", (38 U. S. Statutes at Large, 1164), in so far as it provides "that this section shall apply to seamen on foreign vessels while in the harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement," is violative of the Constitution of the United States.

Whereupon, this court desiring the instruction of the Honorable the Supreme Court of the United States for the proper decision of the questions arising in this case touching the constitutionality of the above-mentioned statutory provision, it is hereby ordered that the following questions and propositions be certified to the Supreme Court of the United States of America in accordance with the provision of section 239 of the Judicial Code, to-wit:

First. Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", violative of the Constitution of the United States?

Second. Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last-mentioned act of Congress, approved March 4, 1915, violative of the Constitution of the United States in so far as it provides "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?"

For information as to the facts of the case copies of the transcript and briefs are herewith transmitted.

Witness our hands this 30th day of January, 1918.

(Signed)

R. W. WALKER,

*Circuit Judge.*

R. L. BATTS,

*Circuit Judge.*

BEVERLY D. EVANS,

*District Judge.*

(Original Filed February 4th, 1918.)

*Mandate of Supreme Court of the United States.*

Filed February 10th, 1919.

UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Fifth Circuit, in a cause between John Dillon, appellant, and Strathearn Steamship Company, Claimant of Steamship "Strathearn", appellee, No. 3140, wherein certain questions arose which were certified by the said Circuit Court of Appeals to the Supreme Court of the United States for its opinion, as by the inspection of the

certificate of the Judges of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and eighteen, the said cause came on to be heard before the said Supreme Court, on the said certificate, and was argued by counsel;

On consideration whereof, It is now here ordered by the Court that said certificate be, and the same is hereby, dismissed.

December 23, 1918.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said certificate notwithstanding.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the seventh day of February, in the year of our Lord one thousand nine hundred and nineteen.

(Signed)

JAMES D. MAHER,

*Clerk of the Supreme Court of the United States.*

*Opinion of the Court.*

Filed March 24th, 1919.

In the United States Circuit Court of Appeals, Fifth Circuit.

Number 3140.

JOHN DILLON, Appellant,

vs.

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship  
"Strathearn," Appellee.

Appeal from the District Court of the United States for the Northern  
District of Florida.

Silas Blake Axtell, L. W. Nelson, W. J. Waguespack, and H. W. Waguespack, for appellant.

J. E. D. Yonge, (W. A. Blount, A. C. Blount, F. B. Carter, and Ralph Jas. M. Bullowa, on the brief), for appellee.

Frederick R. Coudert and Howard Thayer Kingsbury, specially appearing on behalf of the British Vice-Consul at Pensacola, Fla., as amicus curiæ.

Before Walker and Batts, Circuit Judges, and Beverly D. Evans,  
District Judge.

WALKER, *Circuit Judge:*

This is an appeal from a decree dismissing the libel of the appellant, John Dillon, against the British steamship *Strathearn* to re-

cover the wages the libellant had earned as a carpenter on that ship prior to the date of his demand from the master of the ship, made two days after its arrival in the port of Pensacola, where the ship delivered cargo, of one-half part of the wages he had earned, which demand was not complied with. The action of the court was the result of its conclusion that the demand was prematurely made, having been made within less than five days after the arrival of the ship at the port where the demand was made, though no such demand had previously been made, and the appellant's service and the ship's voyage had begun several months before. *The Strathearn*, 239 Fed. 583. The following is the provision of the statute:

"Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void; Provided, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full wages earned. \* \* \* And, provided further, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." §4, 38 St. 1165.

The provision that "such demand shall not be made before the expiration of, nor oftener than once in five days" is not to be given the effect of requiring that five days must have elapsed after the arrival of a ship at a port where it loads or delivers cargo before a demand for half wages can be made with the effect given to it by the statute. Evidently the intention was that such a demand should not have the effect given to it by the statute if it is made within five days "after the voyage has commenced," or if made sooner than five days after the making of a previous demand contemplated by the statute. The appellant's demand was not premature.

The decree appealed from is sought to be sustained on other grounds, of which mention will be made.

It is contended that the appellant was not within the terms of the statute, because he was a British subject, who shipped on a British vessel in a British port. There is nothing to indicate that the word "seamen" in the clause, "that this section shall apply to seamen on foreign vessels while in harbors of the United States," etc., was intended to include only seamen of this country, or that that clause was intended to have the same meaning it would have had if, instead of the word "seaman", the words "American seamen" had been used. Another clause in the same sentence—"and the courts of the United States shall be open to such seamen for its enforcement"—makes it quite plain that foreign seamen are within the provision. It cannot be supposed that the last-quoted clause would have been inserted if only seamen of this country had been in contemplation. Legislation was not needed to open the courts of the United States to them.

Provisions of the act looking to the abrogation of treaties containing provisions inconsistent with it are indicative of the legislative intention to make such provisions as the one in question applicable to foreign seamen while in the ports of the United States. The circumstance that the title of the act shows that a part of its purpose was "to promote the welfare of American seamen in the merchant marine of the United States" is not indicative of an intention to make the provision in question applicable to American seamen only. It well may have been regarded that competition of American seamen in foreign ports with foreign seamen for service on foreign vessels would be hampered if in American ports only American seamen had the right given by the provision in question, so that on that ground the services of foreign seamen would be preferred by foreign vessels destined to American ports.

By the articles signed by the libellant in Great Britain he agreed to serve on a voyage not exceeding three years' duration to any port or places within designated limits, which included ports of this country, for stated wages, which, less advances made, were payable on completion of the agreed service, which had not been completed when the demand for half the wages earned was made. In behalf of the appellee it is contended that if the provision in question is so construed as to be applicable to the case at bar, it is invalid on the ground that it is one not within the legislative power of the United States to make, in that it undertakes to nullify contracts entered into between foreigners in a foreign jurisdiction in which such contracts are valid and enforceable. The enforcement of the provision in question in behalf of a foreign seaman situated as the appellant was does not have that effect. From the fact that a contract is valid and enforceable in the jurisdiction in which it was made it does not follow that it is effective to govern the relations of the parties to it while they are in another jurisdiction with the law or public policy of which it is in conflict. A contract may be valid and enforceable where it was made, and yet be unenforceable in another jurisdiction. *Union Trust Co. v. Grosman*, 245 Fed. 412; *The Kensington*, 183 U. S. 263. The fact that the seaman and the vessel are British does not prevent the American law being applicable to them while both are in an American port. *Patterson v. Bark Eudora*, 190 U. S. 169. The shipping contract would be given the effect of contravening a law of the United States if it were permitted to prevent the acquisition and exercise of a right given to "seamen on foreign vessels while in harbors of the United States" by a statutory provision the terms of which make it plain that the right is given notwithstanding any contract stipulation to the contrary. The statute in question is not given an extra-territorial operation by according to it the effect of preventing the existence of a contract made in another jurisdiction from depriving a seaman who is a party to such contract of a right given to him by statute while both the seaman and the ship are within the territory of the nation the law of which gives the right. The foreign contract does not prevent the relations of the parties to it being governed by the law of the place where the seaman and the ship are. The law of the place where the contract was made would be given an extra-territorial operation if it is allowed to determine the question of the



enforceability of the contract in another jurisdiction, the law of which forbids the enforcement of such a contract.

Another suggestion is that if the provision in question is held to be applicable to the facts of this case it is violative of the constitution of the United States in that it deprives a party of contract rights without due process of law. The statute does not purport to affect, and does not affect the rights of the parties under a contract made in a foreign jurisdiction, except to prevent such contract standing in the way of the enforcement of the domestic law in behalf of and against parties who have subjected themselves to the domestic jurisdiction. "It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another, for the purpose of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement." *Wildenhus's Case*, 120 U. S. 1, 11. A contract made in Great Britain for the services of a British seaman on a British vessel which goes to an American port is not so far effective as to be enforceable in the latter place if its enforcement there would result in setting at naught the law of that place. As the foreign contract is incapable of giving the right claimed by virtue of it, the statute in question cannot properly be regarded as depriving a party to the contract of a right under it, the right claimed not being one which was conferred by the contract or otherwise. The obligation of a contract entered into in one jurisdiction does not extend so far as to entitle the parties to such contract to be exempt from the operation of the law of another jurisdiction to which they subject themselves, which law forbids such effect being given to the contract as is sought to be given to it in that jurisdiction. In our opinion the provision in question is not invalid on either of the grounds urged against it.

The court erred in dismissing the libel.

The decree appealed from is

Reversed.

(Original filed March 24th, 1919.)

*Judgment.*

Extract from the Minutes of March 24th, 1919.

No. 3140.

JOHN DILLON

versus

STRATHEARN STEAMSHIP COMPANY, Claimant of Steamship  
"Strathearn."

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and

decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, reversed;

It is further ordered, adjudged and decreed that the appellee, Strathearn Steamship Company, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

*Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 74 to 86 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 3140, wherein John Dillon is appellant, and Strathearn Steamship Company, Claimant of Steamship "Strathearn" is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 73 are identical with the printed record and supplemental record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th day of May, A. D. 1919.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,

*Clerk of the United States Circuit Court of Appeals.*

89 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3140.

JOHN DILLON, Appellant,

VS.

STRATHEARN STEAMSHIP COMPANY, Claimant of the Steamship  
"Strathearn," Appellee.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled cause heretofore certified by me for filing in the Supreme Court of the United States, was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 23rd day of June, A. D. 1919, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:—

"Circuit Court of Appeals of the United States for the Fifth Circuit.

JOHN DILLON

against

STRATHEARN STEAMSHIP COMPANY, LTD.

It is hereby stipulated and agreed by and between counsels for the above mentioned parties that the certified transcript of record on file in the office of the Clerk of the Supreme Court of the United States in Washington, D. C., can be taken as a return to writ of certiorari granted by said Court on June 9th, 1919, in the case of  
90 Strathearn Steamship Company, Ltd. vs. John Dillon, No. 1036 of October Term, 1918.

Dated, New York, June 23rd, 1919.

(Signed)

W. J. WAGUESPACK,

*Counsel for John Dillon.*

(Signed)

RALPH JAMES M. BULLOWA,

*Counsel for Strathearn Steamship Company, Ltd."*

I further certify that the above is a true and correct copy of said stipulation, and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 23rd day of June, A. D. 1919.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,

*Clerk of the United States Circuit Court  
of Appeals for the Fifth Circuit.*

## 91 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which John Dillon is appellant, and Strathearn Steamship Company, Claimant of Steamship "Strathearn", is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of Florida, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

92 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the seventeenth day of June, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,

*Clerk of the Supreme Court of the United States.*

93 [Endorsed:] File No. 27,122. Supreme Court of the United States, No. 1036, October Term, 1918. Strathearn Steamship Company, Limited, vs. John Dillon. Writ of Certiorari. Filed 23d day of June 1919. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

94 [Endorsed:] 373-19/27122. No. 3140. United States Circuit Court of Appeals for the Fifth Circuit. John Dillon, Appellant, vs. Strathearn Steamship Company, Claimant of S. S. "Strathearn." Writ of Certiorari, and Return Thereto.

95 [Endorsed:] File No. 27,122. Supreme Court U. S. October Term, 1919. Term No. 373. Strathearn Steamship Company, Petitioner, vs. John Dillon. Writ of certiorari and return. Filed June 26, 1919.

No. 873

FILED  
SEP 30 1919  
JAMES D. MAHER  
CLERK

IN THE  
**Supreme Court of the United States**  
October Term, 1919.

STRATHEARN STEAMSHIP COMPANY, *Petitioner,*

vs.

JOHN DILLON, *Respondent.*

Petition and Notice of Motion to Advance  
Cause on Calendar

RALPH JAMES M. BULLOWA,  
*Attorney for Petitioner.*

Supreme Court of the United States  
October Term, 1919.

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STRATHEARN STEAMSHIP COMPANY, *Petitioner,*  
*against*  
JOHN DILLON, *Respondent.*

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*Sirs.*

PLEASE TAKE NOTICE, that on Monday the 6th day of October, 1919, at the opening of Court on that day or as soon thereafter as counsel can be heard, a motion will be made on the annexed petition, before the Supreme Court of the United States, that the above entitled cause be advanced and preferred for a hearing at an early date, convenient to the Court, and the Court will then and there be asked to grant the petitioner such other and further relief in the premises as may be just.

Dated, New York, September 22, 1919.

Yours, etc.,

RALPH JAMES M. BULLOWA,  
Attorney for Petitioner.

To:

SILAS B. AXTELL,  
and

W. J. WAUGESPACK,  
Attorneys for Respondent.

FREDERIC R. COUDERT,  
HOWARD THAYER KINGSBURY,  
*Counsel for the British Embassy,*  
*as amicus curiae.*



# Supreme Court of the United States

October Term—1919

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STRATHEARN STEAMSHIP COMPANY, *Petitioner,*

*against*

JOHN DILLON, *Respondent.*

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Now comes the petitioner, Strathearn Steamship Company, by its counsel, Ralph James M. Bullowa, and moves that the cause be advanced upon the docket of the Court, so that it may be heard at an early date.

This is an action for wages and an appeal from a decision of the U. S. Circuit Court of Appeals for the Fifth Circuit reversing a decree of the U. S. District Court for the Northern District of Florida, which dismissed a libel in admiralty by the present respondent against the petitioner.

## ***Facts.***

The libellant, a British subject, shipped at Liverpool, England, on May 8, 1916, as a carpenter on the Strathearn, a British ship, owned by the Strathearn Steamship Company, a corporation organized and existing under the laws of the Kingdom of Great Britain. The wages were nine pounds per calendar month payable at the termination of the voyage.

Under the terms of the shipping articles signed by libellant in Liverpool on the 6th day of August, 1916, he agreed to serve

“on a voyage not exceeding three years duration to any ports or places within the limits of seventy-



five degrees North and sixty degrees South latitude, commencing at Liverpool—proceeding thence to Newport News, and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom as may be required by the master.”

The *Strathearn* duly proceeded from Liverpool on May 9, 1916, to Newport News, thence to a port in South America and from the last named port to Pensacola, Florida, where she arrived on the afternoon of July 31, 1916, loaded with a cargo. The libellant worked throughout the following day, August 1st, but on the morning of August 2nd, while the vessel was in the port of Pensacola, left the vessel without permission and remained away all day. Before leaving the vessel, the libellant had made some complaint to the Master as to working conditions and left to see the British Consul about that difficulty, and while ashore called upon a lawyer and was advised concerning the Seaman's Act. He returned to the ship, and claiming to be still in the employ of the ship as carpenter, demanded of the Master of the ship one-half of the wages he had then earned, under the terms of said Seaman's Act. Upon being refused payment, he brought the libel herein. Under the terms of the shipping articles signed by libellant, which provided for £9 per month payable at the termination of the voyage, nothing was due him.

The provision of the Seaman's Act, pursuant to which the libellant demanded half wages, is Sec. 4530 of the Revised Statutes of the United States, as the same was amended by Sec. 4 of the Act of Congress approved March 4, 1915, as follows:

“Every seaman on a vessel of the United States shall be entitled to receive on demand from

the master of the vessel to which he belongs, one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulation in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: \* \* \* And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States, shall be open to such seamen for its enforcement."

On December 30, 1916, the District Court held that libellant's demand was premature, and entered a decree dismissing the libel (239 Fed. Rep., 583).

The case was argued before the Circuit Court of Appeals, on December 4, 1917, and subsequently that Court certified to this Honorable Court two questions in accordance with the provisions of Section 239 of the Judicial Code, to wit:

"Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled 'An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea' violative of the Constitution of the United States?

"Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last mentioned act of Congress approved March 4, 1915, violative of the Constitution of the United States in so far as it provides 'That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement'?"

On March 8, 1918, the libellant petitioned this Honorable Court for a preference and the motion was granted. The case was thereupon advanced for hearing, and was argued on November 5, 1918.

On December 23, 1918, this Honorable Court decided that the certificate failed to comply with Rule 37 of this Court, and dismissed the case (248 U. S., 182).

Thereafter, and on March 24, 1919, the said Circuit Court of Appeals for the Fifth Circuit, without hearing any further argument, handed down a decision holding that the libellant's demand was not premature and that the said District Court erred in dismissing the libel, and reversed the decree of that Court, on the ground that, in the opinion of said Circuit Court of Appeals, the provisions of the Seamen's Act were applicable and were not invalid, and a decree of reversal was accordingly entered on March 24, 1919.

Petitioner applied to this Honorable Court for a Writ of Certiorari directed to the United States Circuit Court of Appeals for the Fifth Circuit, to certify and send to this Court a full and complete transcript of the record and proceedings of said Court in this case for review. Said application was granted on June 9, 1919.

The papers in this case and the complete record have been filed with the Clerk of this Honorable Court, and

the case is now on the docket of this Court for the October, 1919, Term, as case No. 373.

The Strathearn Steamship Company, petitioner, by its counsel, prays that a preference be granted to it, and that the cause be set down for hearing at some early date convenient to the Court.

Petitioner's application is based on the following grounds:

FIRST: The merchant marines of foreign governments are seriously affected by the statute in question, because the validity and effect of their contracts with foreign seamen are in doubt, and will be until the questions here raised are decided.

Whether contracts entered into by foreign shippers with foreign seamen are to be of no effect when their ships enter American ports, is a question which affects the vital interests of foreign merchant marines, for, if these contracts with seamen are nullified by this statute, the whole course of shipping agreements must be changed. The general rule of the common law, that any contract for a definite period is an entire contract and must be fully performed to entitle the employee to recover, must be abrogated to enforce this statute in this regard.

It is to put an end to this uncertainty that petitioner respectfully prays this Honorable Court to advance this case.

SECOND: Libellant is a wage earner and this is an action to recover wages, and libellant's rights are in doubt pending the decision of this Honorable Court on the issues raised on this appeal.

THIRD: The rights of many thousands of other seamen and wage earners are in doubt, and will be until the questions here raised are determined by this Honorable Court.

FOURTH: A serious question involving international relations is presented, and should be settled at an early date in order to obviate possible complications.

Upon June 9, 1919, leave was granted to counsel for the British Embassy to intervene as *amici curiae*, join in the application for certiorari; file a brief and take part in the oral argument. Petitioner is advised that counsel for the British Embassy join in the present application for preference.

WHEREFORE, it is respectfully prayed that the Court advance this case for argument.

Dated, New York, September 22, 1919.

RALPH JAMES M. BULLOWA,  
*Counsel for Petitioner,*  
*Strathearn Steamship Co.*